* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ Reserved on: 17.11.2008
% Pronounced on: 19.12.2008

CRIMINAL APPEAL NO. 794/2007

SUSHIL ANSAL APPELLANT

THRU : MR.RAM JETHMALANI, SR.ADVOCATE WITH PT. R.K. NASEEM, MR.MANU SHARMA, MS.LATA KRISHNAMURTY, MR.NITIN TITTAL, MR.NAVEEN KUMAR, ADVOCATES

VS

STATE OF DELHI THRU CBI RESPONDENT

THRU : MR. P.P.MALHOTRA, ASG, MR. HARISH SALVE, SR. ADVOCATE WITH MS. APRAJITA SINGH, MR.Y.K.SAXENA, MR.PAWAN SHARMA, MR. CHETAN CHAWLA, MR.GAURAV SHARMA, ADVOCATES.

CRIMINAL APPEAL NO.846/2007

GOPAL ANSAL APPELLANT

THRU : MR.SUSHIL KUMAR, SR.ADVOCATE, MR.ADITYA KUMAR, MR.VINAY ARORA, MR.SUDERSHAN SINGH RAWAT, MR.PREM KUMAR AND MR. SANJAY NARAYAN, ADVOCATES

VS

STATE (THROUGH CENTRAL BUREAU OF INVESTIGATION) RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH

MS. APRAJITA SINGH MR.Y.K.SAXENA,MR.PAWAN SHARMA,
MR.CHETANCHAWLA, MR.GAURAV SHARMA, ADVOCATES.

CRIMINAL APPEAL NO. 830/2007

SHYAM SUNDER SHARMA APPELLANT

THRU : MR. OM PRAKASH SHARMA, ADVOCATE

VS

CENTRAL BUREAU OF INVESTIGATION RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH
MS. APRAJITA SINGH,MR.Y.K.SAXENA,MR.PAWAN SHARMA,
MR.CHETANCHAWLA,MR.GAURAV SHARMA, ADVOCATES.

CRIMINAL APPEAL NO.4/2008

HARSARUP PANWAR APPELLANT

THRU MR. S.S.DAHIYA, ADVOCATE

VS

THE STATE OF NCT OF DELHI (CBI) NEW DELHI RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH
MS. APRAJITA SINGH MR.Y.K.SAXENA, MR.PAWAN SHARMA,
MR. CHETAN CHAWLA, MR.GAURAV SHARMA ADVOCATES.

CRIMINAL APPEAL 9/2008 & CRL M.A. 125/2008

N.D. TIWARI APPELLANT

THRU : MR. G.P. THAREJA, ADVOCATE

VS.

CENTRAL BUREAU OF INVESTIGATION RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH
MS. APRAJITA SINGH MR.Y.K.SAXENA, MR.PAWAN SHARMA,
MR. CHETAN CHAWLA, MR.GAURAV SHARMA, ADVOCATES.

CRIMINAL APPEAL NO. 21/2008

BRIJ MOHAN SATIJA APPELLANT

THRU : MR.PAWAN NARANG WITH MR.ANISH DHINGRA, MR.PUSKAL
GOGOI AND MR.ANUJ HANDA, ADVOCATES.

VS

CENTRAL BUREAU OF INVESTIVATION RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH
MS. APRAJITA SINGH MR.Y.K.SAXENA, MR.PAWAN SHARMA,
MR. CHETAN CHAWLA, MR.GAURAV SHARMA, ADVOCATES.

CRIMINAL APPEAL NO. 33/2008

BIR SINGH (IN J.C.) APPELLANT

THRU : MR. SHAHZAD KHAN, ADVOCATE

VS

STATE OF NCT OFDELHI THRU CBI RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH
MS. APRAJITA SINGH MR.Y.K.SAXENA, MR.PAWAN SHARMA,
MR. CHETAN CHAWLA, MR.GAURAV SHARMA, ADVOCATES.

CRIMINAL APPEAL NO.45/2008

NIRMAL SINGH CHOPRA APPELLANT

THRU : MR.K.C.CHOPRA, ADVOCATE WITH MR.NIRMAL CHOPRA AND
MS.SMRITI CHOPRA, ADVOCATE

VS

STATE THRU CENTRAL BUREAU OF INVESTIGATION RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH MS. APRAJITA SINGH MR.Y.K.SAXENA, MR.PAWAN SHARMA, MR. CHETAN CHAWLA, MR.GAURAV SHARMA, ADVOCATES.

CRIMINAL APPEAL NO.46/2008

RADHA KRISHAN SHARMA APPELLANT

THRU : MR.K.C.CHOPRA, ADVOCATE WITH MR.NIRMAL CHOPRA AND MS.SMRITI CHOPRA, ADVOCATE

VS

STATE THRU CENTRAL BUREAU OF INVESTIGATION RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH MS. APRAJITA SINGH MR.Y.K.SAXENA, MR.PAWAN SHARMA, MR. CHETAN CHAWLA, MR.GAURAV SHARMA, ADVOCATES.

CRIMINAL APPEAL NO.56/2008

ANAND KUMAR GERA APPELLANT
THRU : MS.REBECA M.JOHN, ADVOCATE

VS

STATE THRU CENTRAL BUREAU OF INVESTIGATION RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH MS. APRAJITA SINGH MR.Y.K.SAXENA, MR.PAWAN SHARMA, MR. CHETAN CHAWLA, MR.GAURAV SHARMA, ADV.FOR CBI

CRIMINAL APPEAL NO.66/2008

MANMOHAN UNIYAL APPELLANT

THRU : MR. RAMESH GUPTA, MR. SANDEEP GOEL, MR. MANISH TIWARI, MR. M. BEGUM, MR. SUMIT ARORA, MR. VIJAY BISNOI, MR. SULEMAN M. KHAN, MR. DEEP KISHORE, ADVOCATES

VS

STAT E THRU CENTRAL BUREAU OF INVESTIGATION RESPONDENT

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH
MS. APRAJITA SINGH MR.Y.K.SAXENA, MR.PAWAN SHARMA,
MR. CHETAN CHAWLA, MR.GAURAV SHARMA, ADVOCATES.

CRIMINAL REVISION NO. 17/2008

ASSOCIATION OF VICTIMS OF THE UPHAR TRAGEDY APPELLANT

THRU : MR.K.T.S.TULSI, SR.ADVOCATE WITH MR.K.SULTAN SINGH, MR.RAVINDER SINGH AND MR.MAHEEN PRADHAN, ADVOCATES WITH MS.NEELAM
KRISHNAMURTHY, PRESIDENT OF THE ASSOCIATION

VS

STATE OF NCT OFDELHI & ORS. RESPONDENTS

THRU : MR. P.P.MALHOTRA,ASG, MR. HARISH SALVE, SR. ADVOCATE WITH
MS. APRAJITA SINGH MR.Y.K.SAXENA, MR.PAWAN SHARMA,
MR. CHETAN CHAWLA, MR.GAURAV SHARMA, ADVOCATES.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat

I INTRODUCTION

1.1 In these appeals, the judgment of the District and Sessions Judge in S.C. No. 13/2007 has been challenged. The Central Bureau of Investigation (C.B.I.), the prosecuting agency, had filed a common charge sheet alleging that the role of different accused numbering about 16 at the beginning of the investigation, amounted to various offences under the Indian Penal Code, 1860 (IPC). Seven accused were charged with having committed offences punishable under Section 304 IPC read with Section 36; 9 others were accused to having committed the offence punishable under Section 304A read with sections 337/338 and 36 IPC. Two accused, that is, A-1 & A-2, were additionally charged with offences committed punishable under Section 14 of the Cinematograph Act, 1951. The events, which unfolded and ultimately resulted in the tragedy that occurred on 13.6.1997, are briefly described below. It resulted in a tragic incident in the Uphaar cinema hall, Delhi, during the course of a show which started at 3 PM. Thick smoke, resulting from the fire caused in the parking area of the building resulted in the death of 59 persons who had visited and were viewing the cinema from the balcony and grievously injured 100 others. The cause of death was determined as asphyxiation.

1.2 During the trial, four accused, i.e., R.M. Puri, K.L. Malhotra, Surender Dutt and S.N. Dandona, expired. The cases against them abated. The twelve accused who remained were convicted as charged. They appealed to this Court. During the pendency of their appeals after conclusion of arguments one of the appellants A.K. Choudhary died. His appeal,

therefore, abated. In addition to the appeals, the Association of Victims of Uphaar Tragedy, espousing the cause of the near and dear ones of those who lost their lives in the tragedy, preferred a common revision under Section 397 of the Code of Criminal Procedure, 1973, arraying five appellants/accused and contending that the materials on record proved during the trial enabled the Court to return a conviction that such accused/respondents were guilty of committing the offences punishable under Section 304 Part-II IPC.

1.3 The appeals and revisions were initially heard from time to time between 11.12.2007 and 12.9.2008. By an order-dated 10.9.2008 the Supreme Court cancelled the bail of some accused. By the same order, the Court also desired that the appeals and revision should be specially assigned to a Judge who could hear them on a day-to-day basis and dispose them off. Accordingly, the Court on 22.9.2008 set down these cases for hearing, which were conducted for 26 days and counsel for the parties concluded their submissions on 17.11.2008, when the judgment in these matters was reserved.

1.4 It would be useful to recount in brief, the events as found by the Trial Court. The Green Park Theatres (P) Ltd. (GPT Ltd) leased the cinema plot in 1971 from its original lessor R.C.Sood and Company, and submitted modified sanction plans for the cinema building. The initial proposal, reflected in the original sanction plan was to install a 500 KVA transformer to serve the needs of the cinema. The correspondence between the cinema

management and DVB is to the effect that later, on 2.2.1973, the former agreed for the installation of another transformer in the premises. A subsequent letter clarifies that this was on the understanding that, in case of emergency, the DVB transformer would supply power to the cinema hall. The DVB transformer was in fact installed in 1975; however, no MCD sanction was secured for this purpose.

1.5 The Trial Court held that the inspection room was later permitted to be converted into an 18 seater box for use by the owners in the balcony. The balcony as originally proposed was to contain 250 seats. By a notification, issued in 1976, seats in the balcony were increased thus aggregating to 293. While doing this, the right gangway leading to an exit, which in turn led to a staircase, was substantially blocked, in lieu of which a middle gangway was created. The local government sought to withdraw the notification permitting extra seats, which withdrawal notification of 1979, was challenged by various cinema halls including the Uphaar cinema. The Court while disposing of the petitions, directed the licensing authorities to inspect the cinema hall and determine whether additional seats could be permitted/ provided and also directed them to ensure that there was substantial compliance with the rules. Meanwhile, a proposal was put forth to increase the number of seats in the Uphaar cinema balcony to 302 and the right side exit was sought to be closed by installing a family a box to cater to the growing needs of the owners. Permission was accorded, and instead of the right side exit, another exit was provided on the left side. After considering different

proposals and issuing a show cause notice saying that the increase in seats would endanger safety, the Licensing Authority permitted the introduction of 15 additional seats thereby resulting in 302 balcony seats.

1.6 In 1983, after a series of fire accidents in the city, the Lt. Governor ordered inspection of all the cinema halls, which resulted in the cancellation of license of Uphaar cinema hall. The cinema halls including Uphaar challenged the move. Initially, the High Court passed a stay order, after which the cinema hall was inspected and certain deficiencies pointed out. The interim order made in the writ petition was later continued and the Court permitted statutory authorities including the Licensing Authority, to approach it for variation in case of any concern regarding safety measures in the cinema halls. Another round of inspection of the cinema hall took place in 1994 and 1996. Each of them listed out various deficiencies and also noted which of the previously noticed deficiencies had been rectified. Meanwhile, the Licensing Authority was issuing temporary permits for two-month periods, and every such permit stated that it was subject to orders of Court.

1.7 On 6th July 1989 a late night fire incident caused extensive damage to both the transformers in the Uphaar cinema and resulted in the escape of gases into the cinema hall. The fire brigade was called in and after quite some time the fire was brought under control. The cinema hall could not operate for about two weeks. Uphaar's transformer was replaced,

which was inspected by the Electrical Inspector. The DVB's transformer too was replaced with another one of 1000 KVA capacity; however, there was no inspection by the Electrical Inspector.

1.8 On 17th October 1988 accused No.1 and No.2 resigned as Directors of the company. The Trial Court, however found that they were involved in the management of the cinema in several ways. Reliance was placed upon a plethora of documents to show that the first accused continued to be the licensee of the cinema hall and that both the accused had dominant control over the company's management and decisions right up to the date of incident i.e. 13.6.1997.

1.9 In the morning on 13.6.1997 there was a fire in the DVB transformer. This was immediately reported and a team of four employees of DVB was deployed to attend to the defect and repair it. The Trial Court held that accused Bir Singh, Satija and A.K. Gera in not using the crimping machine while replacing the B phase cable, attended the complaint in a negligent manner. The matinee show of "Border" started at 3.00 p.m.

1.10 Between 3.55 and 4.55 p.m. there was a general power shut down; however the cinema show continued. Immediately on resumption of electricity supply at 4.55 p.m. there was intense and heavy sparking in the Uphaar DVB transformer which led to the B phase

cable detaching, sliding down of the B phase cable, forming an arc, ultimately resulting in rupture of the transformer fin. Through this slit, the transformer oil spilled out, caught fire and consequently set ablaze several vehicles parked nearby in the stilt floor. This fire generated hot thick black smoke, which traveled upwards, accelerated by a chimney effect.

1.11 The smoke entered the hall from the staircases, air conditioning ducts as well as the exits beneath the screen, and the patrons sitting in the auditorium escaped immediately. But the patrons sitting in the balcony found it hard to escape as there were no lights due to the lack of power supply, nor were there any emergency lights, warnings through public address system to evacuate immediately and indication of exits. The closure of the right side exit, elimination of one gangway and the narrowing of another, as well as the introduction of certain seats near the left side exit, together with the bolting of certain doors in the balcony were held to have caused panic and resulted in delayed escape of many patrons. Most of the patrons were subsequently rescued by the fire tenders, but were severely affected by the smoke. The fire was soon declared a major one and rescue operations continued till about 7.30 p.m. The entire accident eventually led to the death of 59 patrons and injury to 100 others.

1.12 The cause of death in the opinion of medical experts was inhalation of smoke, which contained several toxic gases that resulted in asphyxia. Initially, the local police were in

charge of the investigation, which was later handed over to the Crime Branch of Delhi Police and subsequently in the end of July, the case was transferred to the CBI, which filed its charge sheet on 15.11.1997.

1.13 That be a synopsis of the factual backdrop, for the sake of convenience, it is proposed to give outline of this judgment. Part II of this judgment summarizes the charge sheet file by the CBI and the charges framed against the accused, while Part III is a précis of the oral evidence adduced before the Trial Court. The Trial Court's findings are summarized in Part IV and the Part V details the arguments addressed by various counsel during the course of the hearing. In Part VI of this judgment certain preliminary questions of law by the counsel have been addressed and Part VII is the detailed finding on the factual matrix. The law relating to criminal negligence and Section 36 of the IPC has been dealt with in Part VIII. Detailed findings in respect of the Criminal Appeals and the Criminal Revision Petition are contained in Part IX to Part XV. Part XVI contains the conclusions and order on sentence.

II. CHARGE SHEET AND CHARGES FRAMED

2.1 The CBI's charge sheet alleged that Sh. Sudhir Kumar, on 13.06.97 at about 7.00 a.m. on hearing an explosion, along with other security guards saw smoke in the transformer room, and immediately telephoned the Fire Brigade. The transformer was repaired by Delhi Electric Supply Undertaking (hereafter referred to variously as "DESU" or "DVB"); the fire was extinguished. The transformer was operated again and during the show of the film

"Border" from 3 PM to 6 PM at about 5.00 PM a big explosion took place, followed by heavy smoke. The vehicles parked in the parking area caught fire. The complainant immediately informed the Uphaar staff to inform the Police and the Fire Brigade but the smoke spread to Uphaar cinama hall. It was alleged that the transformer which caught fire in the morning was improperly repaired due to which the incident occurred in the evening. The Uphaar Management and staff without bothering for the life and safety of the public, in spite of the defective transformer screened the "Border" film, resulting in death of many people, besides loss to property. For this incident the Uphaar Management and staff are responsible.

2.2 The prosecution alleged that M/s. Green Park Theatres Associated (P) Ltd. (hereafter "GPT") was incorporated on 03-02-1972 by S/Shri R.C. Sood, S.K. Sood and J.R. Sood to construct and run a cinema on a plot of land measuring about 2480 sq. yards situated at Green Park Extension Market, New Delhi. That plot of land was leased by Sh. Chiranji Lal Ansal and family. M/s. Chiranji Lal Ansal, Sushil Ansal and Gopal Ansal were appointed as Directors of this company on 26.5.1972. The new Board of Directors also acquired the shares of the earlier patrons of the company, and adopted the Memorandum of Association and Articles of Association submitted by the earlier directors. According to the Memorandum and Articles of Association of the company, it could engage in the business of cinema shows exhibition etc. The original cinema building plan was submitted by Sh. R.C. Sood and Co. in 1970; after Ansals took over the company a revised plan was submitted in 1972, which was

sanctioned on 22-03-73 and the completion certificate of cinema building was granted by the Municipal Corporation of Delhi (hereafter "MCD") on 10-04-73. GPT was issued the licence for running the Uphaar (hereafter "Uphaar " or the "cinema hall") on 24-4-73 by the Licensing Authority i.e. the Distt. Magistrate and Uphaar was inaugurated on 27-4-73.

2.3 The CBI charge sheet disclosed the Directors of GPT. Shri Sushil Ansal was a director from 26-5-1972 to 17-10-1988. Shri Gopal Ansal was director from 26-5-1972 to 17-10-1988 and 24.12.94 to 30-6-1995. GPT was renamed as Ansal Theatres and Clubotels Pvt. Ltd. ("Ansal Theatres") on 11-03-96. The new Company continued the same business. The Directors of the said company for various periods, were also mentioned in the charge sheet. GPT was issued a licence by Entertainment Tax Officer (hereafter "ETO") on receipt of the approval from the Executive Engineer, PWD (hereafter "PWD") for exhibition of films in the building to accommodate 1,000 persons with 250 seats in the balcony and 750 seats in the hall (located on the first floor, also called "rear stall"). The balcony was to be flanked by vertical gangways on both sides and in the middle (near the entry gate) with exit gate on both sides as also a longitudinal gangway. GPT's license was granted under Section 10 of Cinematograph Act 1952, subject to compliance with rules framed under Section 12 and 16. The charge sheet relied on Rule 10 of the Delhi Cinematograph Rules 1953(hereafter "DCR 1953") to show the Licencee's responsibility for compliance with the provisions of the Rules and with the conditions of his licence for maintenance of the licenced premises at all times

and in all respects in conformity with the standards prescribed. It relied also on Rule 12 of the said Rules. It further adverted to Rule 14 of the Delhi Cinematograph Rules, 1981 (hereafter "DCR, 1981") authorizing the Chief Fire Officer (CFO) to report whether prescribed fire extinguisher appliances were installed, and in working order and suitable for the purpose for which they were intended. The other rules adverted to were Rule 21, Rule 24, Clauses 6, 7 8 and 10 of the First Schedule to the rules which prescribed the seating and standing area standards, proper exits, gangways, their arrangement and spacing, etc. The charge-sheet further referred to Condition No.2 of the license, which obliges maintainence of every licensed building/place in all respects, in strict conformity with the rules contained in the First Schedule and Part-IV of DCR 1953. Those provisions are also incorporated in the Delhi Cinematograph Rules 1981 ("DCR 1981"), such as Clauses 3(6), and 9(1).

2.4 It was alleged that Sh.Sushil Ansal, Director had requested DESU for load and power connections to Uphaar on 29.7.72 and agreed to give space for installation of a DESU Sub-station (besides the Uphaar's sub-station) in the car parking area of the building. The matter was processed in the DESU; the Ansals agreed to give the space at Rs.11/- per year as rent on condition that in case of emergency DESU would supply power to Uphaar. The 500 KVA Uphaar transformer was installed and energized on 19.10.73. The DVB 750 KVA transformer was installed and energized on 6.9.1975. In 1974 on the request of Shri Sushil Ansal, Director of Uphaar Company, Shri J.C.Rawal, ETO, approved installation of 14 seats

in the room sanctioned as an "Inspection Room" in the original building plan, by the MCD. On the request of Shri Sushil Ansal, MD of GPT, the licence of Uphaar was renewed for the period 1974-75, 24.3.75 to 23.4.76 and subsequently from 24.4.76 to 23.4.77.

2.5 The Delhi Administration had issued a notification on 30.9.76 (hereafter "the 1976 Notification") under Rule 3 of the DCR 1953, increasing the seats in 40 cinema halls in Delhi including in the Uphaar. By this, Uphaar was sanctioned with 100 additional seats including *inter alia* 43 seats in the balcony by adding seats in two vertical gangways and introducing a new gangway in the middle in lieu of that. The alteration had to be carried out in the right wing of the Balcony. It was alleged that on 5.11.76, Sh.Gopal Ansal, Director informed the ETO that 43 seats were added in the Balcony. This closed the right hand side vertical gangway leading to the right hand side exit gate as well as the right hand side vertical gangway near the entry gate. He wrote to the ETO informing that they were installing 57 seats (in the rear stall), which was allowed by the ETO on 8.11.78. On 1.12.78 Gopal Ansal informed the ETO that they had installed an additional 42 seats against the sanctioned in the hall and also enclosed a revised seating plan. The ETO, by letter dated 6.12.78 conveyed "no objection" for sale of tickets for the 42 additional seats. The charge sheet mentioned about furnishing of a no objection certificate by the Executive Engineer, PWD. The Assistant Divisional Officer, Delhi Fire Service, inspected Uphaar and the CFO, sent a letter dated

25.2.77 to Uphaar, mentioning certain defects observed in the functioning of the cinema hall, mainly in relation to fire extinguishers their condition, and maintenance.

2.6 On 24.5.78 Sh.Gopal Ansal, Director by a letter to ETO sought sanction for an additional 8 seater box in the cinema hall for family use. He also enclosed the necessary drawings/plan. This proposal was processed by the ETO; Sh. S.N. Dandona, Executive Engineer by his letter dated 28-6-78 to the ETO, said that after inspection, he was of view that the additional 8 seats proposed as a private box were in accordance with Rules. The then ETO put up a note recommending permission on 24.8.78. The DCP (Lic) on 4-10-78, approved the installation of the 8 seater box. This box closed the right hand side of the balcony, which is in violation of the provisions of Clause 10 of the First Schedule of DCR, 1953.

2.7 The Delhi Administration (Home) issued a Notification on 27.07.79 (hereafter called "the 1979" Notification) under Rule 3, DCR cancelling the previous Notification dated 30.09.76. On 28-7-79 after issue of the said Notification dt. 27.07.79, DCP (Lic) issued a memo to Uphaar , directing withdrawal of additional seats permitted earlier and to report compliance before 4-8-79. The cinema hall filed a writ petition No. 1055 of 1979 in the Delhi High Court and obtained an interim order. As directed by this Court the DCP (Lic) with Sh. S.N. Dandona, Executive Engineer, PWD and the CFO inspected Uphaar on 5.10.1979. The

DCP issued show cause notice on 6.12.79 directing removal of all the additional seats. After hearing the Licensee another inspection took place on 19.12.79. An order dt. 23.12.79, was issued, on the technical advise of Sh. S.N. Dandona permitted Uphaar to retain the 37 seats in the balcony which in fact closed the right side gangway and therefore the exit.

2.8 On 29.7.80, Sh. Gopal Ansal, Director, wrote a letter to DCP (Lic) requesting permission to add 15 balcony seats. On this the DCP (Licencing) on 27.8.80 asked the Executive Engineer, PWD and the CFO (CFO) to examine it with reference DCR, 1953 and send a report. Sh. S.N. Dandona, Executive Engineer, PWD, sent a report dt. 3.9.80 to the DCP (Licencing) saying that the 15 additional seats in the Balcony were not in accordance with the First Schedule and returned the plan with some observations. Sh. Gopal Ansal, Director on 5.9.80 sent a revised plan to Sh. S.N. Dandona, Executive Engineer, who on 10.9.80 approved the addition of 15 seats stating that though there were only 3 exits in the Balcony, the licensee can be allowed to have 1% variation from the norms. This was contravention of the provisions of DCR 1953. Accordingly, on the advice of Sh. S.N. Dandona, the Licensing Authority by order dated 4.10.80 allowed the addition of 15 seats in the Balcony.

2.9 According to the prosecution on receipt of request dt. 22.2.80 from Shri Sushil Ansal and no objection from Shri S.N. Dandona, the licence of Uphaar was renewed up-to 23.4.81.

The DCR 1981 were brought into force; they enabled inspection of cinema halls by the CFO for confirming existence of provisions from means of escape and fire safety point of view. The licensing authority thereafter started requesting the CFO for such inspection of the Uphaar and other cinema halls and submit observation or no objection for renewal of the licences. The prosecution mentioned about issuance of no objection certificates and license till 23.4.82; a request, on 18.2.83, by Sh. Sushil Ansal, MD, for renewal of the licence from 24.4.83 to 23.4.84 and on receipt of 'No Objection Certificate' from, PWD and CFO, Uphaar's license being renewed upto 23.4.84 on 23.4.83. It was also alleged that following the incident of fire in the LPG godown at Shakur Basti and Gopala Tower the Lt. Governor by order dt. 7.6.83 directed inspection of all cinema houses in Delhi to detect deviations. Accordingly a joint team of officers of licensing, Delhi Fire Service etc. inspected Uphaar, on 9.6.83, 13.6.83 and 21.6.83 and found structural and fire safety deviations. Uphaar cinema license was suspended by DCP (Lic) on 27.6.1983 for a period of 4 days. Against this the licensee moved the High Court and obtained stay order on 28.6.83. A representation dated 16.7.83 was filed by M/s. GPT Ltd. given to Lt. Governor, Delhi, who constituted a three member Committee. The Committee also pointed out violations in the cinema hall. However, the stay order issued by the High Court of Delhi continued as on the date of the fire incident. On account of the said stay order, temporary permits were issued to Uphaar

2.10 The charge sheet adverts to the request by Sh. Sushil Ansal on 1.2.1984 for renewal of Uphaar's annual licence, the CFO's opinion about some deviations in the building, and a letter dated 16.5.84 by Sh. Gopal Ansal, Director of GPT Ltd to the CFO on this aspect, stating that they had substantially rectified the deviations. The CFO inspected Uphaar on 31.5.84 and sent a report on 30.7.84. The permit of the cinema hall was renewed from time to time up to 23.4.85 and subsequently up to 23.4.87. In 1986, Delhi Fire Prevention & Fire Safety Act ("the 1986 Act") came into force making provisions for fire safety means. Further in 1987 Delhi Fire Prevention & Fire Safety Rules were framed which prescribed the minimum standards for fire prevention and fire safety measures for high rise buildings, higher than 15 meters.

2.11 On the night of 6.7.89 there was a fire in the Uphaar. On 7.7.89 Sh. Malhotra, Dy. General Manager, Uphaar, wrote to the DCP (Lic) stating that due to fault in the Sub-station smoke emerged from the transformer causing fire to the cables at 11.30 p.m. on 6.7.89 resulting in considerable damage which needed immediate repairs, and replacement of cables; the cinema was also closed to the public. On 7.7.89 the Uphaar wrote a letter to the CFO to confirm that the building had not been sealed by the Fire Service after the fire, so that they could start the repair work. The CFO replied, confirming that the building was unsealed. A detailed fire report was also given by the CFO. On 13.7.89, DCP (Lic) sent a letter to Licensee, the Uphaar cinema not to reopen the hall to the public till the repairs were made.

On 20.7.89 DCP (Lic) permitted the Uphaar hall to reopen, provided all security measures were taken for safety of the patrons. According to the charge sheet, "no objections" certificates were sought for from time to time, and the cinema hall was issued temporary license up to 31.3.94.

2.12 By amendment to DCR 1981, on 3.5.94 the local authority for inspection of cinema halls for renewal of licence was changed from the PWD to the MCD; thereafter the latter was enabled to inspect and issue 'No objection' for renewal of licence of the cinema and other cinemas. According to the charge sheet, on receipt of letter dt. 5.3.94 from Sh. K.L. Malhotra, DGM, Uphaar and affidavit of Sh. R.M. Puri, Director, no objection from Sh. H.S. Panwar, Divisional Officer and Sh. Surender Dutt, Station Officer, Delhi Fire Service and Executive Engineer PWD, the temporary permits of Uphaar were renewed from time to time up to 31.3.95. According to the inspection report sent on 12.8.84 by Sh. Surender Kumar, Dy. CFO (III) four deviations mentioned in the order suspending the license of Uphaar were still in existence and offices of various agencies still existed in the building, which were fire hazards. An office, on the top floor of the building had been created, forming part of the stair case which posed hindrance for free movement of the public and were fire hazard being wooden constructions. On 30.8.94 a Sh. Vimal Nagpal of GPT wrote to the CFO mentioning that a homeopathy cabin had been vacated and all other rectifications had been carried out. Another inspection of Uphaar was carried out by Sh. P.K. Sharma, ADO

and Sh. Surender Dutt, Station Officer, Delhi Fire Service and a report was sent on 12.10.94 by Deputy CFO to Sh. Vimal Nagpal of the said company mentioning about the deviations and directing the Company to rectify the short comings. On 31.3.93 Shri Vimal Nagpal of Uphaar wrote a letter of the Deputy CFO stating that they have rectified the shortcomings. On receipt of no objection from the Delhi Fire Service, the temporary permits of Uphaar were renewed up to 31.3.95.

2.13 It was alleged that on 18.3.95 Shri K.L. Malhotra, Dy. General Manager, Uphaar requested the DCP (Lic) to renew the licence from 24.4.95 to 23.4.96. The DCP (Lic) obtained no objection from the ADO and Shri Dutt, STO of Delhi Fire Service. The DCP (Lic) wrote to the Zonal Engineer, MCD, on 20.4.95 to inspect Uphaar for renewal of licence and Shri Shyam Sunder Sharma the then Administrative Officer, MCD, South Zone unauthorizedly issued a no objection certificate to the Deputy Commissioner of Police (Lic) on 28.9.95 for renewal of licence of Uphaar cinema. This no objection certificate was personally collected by Sh. K.L. Malhotra, DGM, on the same day i.e. 28.9.95; on the basis of the said no objection certificate from Shri Sham Sunder Sharma, Administrative Officer, MCD and one from Shri P.K. Sharma, Assistant Div. Officer and Shri Surender Dutt, Station Officer, Delhi Fire Service dt. 4.5.95 with reference to some inspection carried out by the aforesaid two officers of DFS on 29.4.95 in presence of Shri K.L. Malhotra the licensing authority renewed the temporary permits of Uphaar up to 31.3.96.

2.14 The charge sheet alleged that on 23.2.96 Mrs. Vimla Mehra, Additional Commissioner of Police (Licensing) wrote to the MCD, CFO and DDA for physical inspection of Uphaar and 12 other cinema halls and submit a report to enable moving the High Court for vacation of the stay. The licensing authority sent reminders on 15.3.96, 19.3.96 and 12.4.96 asking the MCD to inspect the premises and sent a report. The Uphaar was inspected by a team of Engineers of the Building Department, MCD on 29.4.96 who submitted a report on 30.4.96 to the Executive Engineer (Building) mentioning about deviations. The MCD wrote to the Additional Commissioner of Police (Licensing) on 23.5.96 mentioning the deviations found in Uphaar with reference to those noticed in 1983.

2.15 The charge sheet alleged that on 1.3.96 Sh. K.L. Malhotra, Deputy General Manager Uphaar wrote to DCP (Lic) for renewal of the cinema license from 24.4.96 to 23.4.97 and enclosed an affidavit of Sh. R.M. Puri, Director to the effect that he was the licensee of Uphaar and had not let out the cinema hall to anybody. On 11.3.96, DCP Licensing) asked the CFO, Delhi Electrical Inspector, Zonal Engineer (Building), MCD South Zone, Green Park, New Delhi to inspect Uphaar and report. Further that on 9.4.96 Sh. H.S. Panwar, Divisional Officer and Sh. Surender Dutt, Station Officer, Delhi Fire Service inspected Uphaar in presence of Sh. K.L. Malhotra, Dy. General Manager. Sh. H.S. Panwar sent an inspection report dt. 18.4.96 to the DCP (Lic) stating that the fire fighting arrangements at

Uphaar were satisfactory and suggesting that at least two trained persons must be available during the exhibition of films. He recorded no objection to the renewal of licence of the Uphaar cinema house from fire safety and means of escape points of view. Mrs.Vimla Mehra, Additional Commissioner of Police (Licensing) wrote a letter dated 23.7.96 to the Commissioner, MCD followed by reminder dt. 8.8.96, requesting for annual inspection of Uphaar, and other cinema halls and for a report in the prescribed proforma. On 2.9.96 Sh. M.M. Dass, Executive Engineer (Building) Head Quarters, MCD sent a letter to the ACP stating that they had already sent a report in respect of 13 cinema buildings including Uphaar mentioning the deviations on 23.5.96 and also enclosed a copy of that letter. The DCP (Lic.) sent a reminder-dated 20.9.96 to the Zonal Engineer (Building), MCD, South Zone, Green Park to send a reply to their request for inspection. Another letter dated 3.10.96 was also sent by Ms. Vimla Mehra to the MCD for annual inspection. Sh. H.S. Panwar on 18.11.96 wrote a letter to Manager, Uphaar Cinema stating that he and Sh. Surender Dutt, Station Officer inspected Uphaar on 4.11.96 to check the existing fire safety arrangements in presence of Sh. Malhotra, Dy. General Manager and Sh. R.K. Sharma, Manager. He mentioned about some deviations. In reply to this Sh. Vimal Nagpal sent a letter-dated 28.11.96 to the Divisional Officer, DFS, stating that the necessary rectifications had been carried out and requesting for issuance of NOC. The Uphaar was re-inspected by Sh. H.S. Panwar, Divisional Officer and Sh. Surender Dutt, Station Officer, DFS on 22.12.96 in the presence of Sh. K.L. Malhotra, DGM and an inspection report dated 24.12.96 was sent by Shri H.S. Panwar to the DCP

(Lic.) stating that they had no objection for renewal of the license from fire safety and means of escape point of view. On 22.12.96 on the date on which the inspection was reported to have been carried out, Shri H.S. Panwar was on casual leave as per the records.

2.16 The charge sheet alleged that Shri N.D. Tiwari, Administrative Officer unauthorizedly and without inspection issued a "No Objection Certificate' dated 25.9.96 which was collected by Shri K.L. Malhotra, Dy. General Manager of Uphaar. Further that on the basis of the said NOC dated. 18.4.96 and 24.12.96 of Shri H.S. Panwar and Sh. Surender Dutt of Delhi Fire Service, and that issued by Sh. N.D. Tiwari, Administrative Officer, MCD temporary permits of Uphaar were renewed up to 31.3.97 by DCP (Lic). The charge sheet alleged that on receipt of letter dated 1.3.97 of Shri K.L. Malhotra, DGM, Uphaar and affidavit dated 10.3.97 of Shri R.M. Puri, Director, DCP (Lic) on 21.4.97 asked the CFO, Electrical Inspector, Zonal Engineer (Building), MCD, South Zone and the Zonal Health Officer to inspect Uphaar and send reports. On 12.5.97 Shri H.S. Panwar, Divisional Officer, Shri Surender Dutt, Station Officer, Delhi Fire Service inspected Uphaar and sent an inspection report dated. 15.5.97 stating that the fire fighting arrangements found at the time of inspection must be maintained by the licensee at all time and at least two trained persons must be available during the exhibition of films. Shri H.S. Panwar and Sh. Surender Dutt issued a no objection letter to the renewal of the license of Uphaar Cinema hall from fire safety and means of escape points of view for the year 1.4.97 to 31.3.98. In the inspection

proforma Shri H.S. Panwar and Shri Surender Dutt mentioned that two trained fire men were available, emergency lights, gangway lights, exit lights, public address system and underground water tank were provided. Again on 6.2.97 the DCP (LIC) sent a letter to the Commissioner, MCD for annual inspection of Uphaar but no inspection was carried out by the MCD and un-authorizedly a NOC was sent by Shri N.D. Tiwari, Administrative Officer on 23.9.96 as was done by Shri Shyam Sunder Sharma, AO on 28.9.95. However, temporary permits of Uphaar were renewed from 1.4.97 upto 31.5.97.

2.17 Shri K.L. Malhotra had applied for renewal of the temporary permit from 1.6.97 to 31.7.97 in the name of GPT Ltd. whereas the name of the company was changed to Ansal Theatre and Culbotels (P) Ltd. w.e.f. 11.3.96. Further the licensee, GPT had on 16.12.96 informed the Licensing Authority that the company's name had changed. The Licensing Authority had on 6.3.97 accepted that change of name. Further the temporary permit of Uphaar was renewed/approved by DCP (Lic) on 6.6.97 and it was collected by the Uphaar Management after the fire incident of 13.6.97.

2.18 The charge-sheet alleged that on 13.6.97 at 7 A.M. a fire was noticed in the DESU transformer and hence the Fire Service was informed. At about 06.55 hrs. the complaint about fire at Uphaar was received by the DVB Green Park Compliant Centre from Shakti Sadan. Shri Deep Chand, Attendant of the Complaint Centre deputed Shri Munna Lal, Jr.

Lineman who along with Jiya Lal, Majdoor visited Uphaar and found sparking in the DESU/DVB transformer. The insulation of the cables were burning. He extinguished the fire with sand. He returned to the Complaint Centre at 7.25 AM and reported the matter to Shri Deep Chand who informed Shri C.J. Singh, Superintendent, Break Down and Shri P.C. Bhardwaj, AE as well as Shri A.K. Gupta, EE. Shri C.J. Singh, Superintendent went to the Complaint Centre and then to Uphaar at about 7.45 AM and found the insulation of the 3 LT side cable leads partly burnt. He closed the shutter of the room and after attending to the work at Sadiq Nagar informed Shri S.C. Mehta, AE at 9 AM at his residence about burning of the cable leads. In the meantime Shri P.C. Bhardwaj, AE Sub-Station received the information at about 8 A.M. and at 9.30 A.M. he instructed Sh. B.M. Satija, Inspector, Shri A.K. Gera, Inspector, Shri Bir Singh, Sr. Fitter. They repaired the DVB transformer at Uphaar around 10.30 AM in presence of Shri Bhagwandin, Majdoor. Two aluminium sockets of 'B' phase of LT side cable leads were replaced with the help of two dyes and hammer as a crimping machine was not with them. After fitting the sockets inside the cable leads, the sockets in the bus bar were connected with the help of nut and bolts. When the work was being carried out Shri Thakur Singh, Lineman of Green Park Complaint Centre also reached there. Shri Bir Singh, Sr. Fitter and the Inspectors checked the connections. The staff left Uphaar at 11.30 AM at 2 P.M. Shri P.C. Bhardwaj, AE telephoned to the R.K. Puram Office of Inspectors to enquire about the complaints. Shri A.K. Gera, Inspector informed him that all the four complaints including that of Uphaar had been attended to by

them and the power supply to Uphaar was restored at 11.30 AM. In the General Diary (GD) Shri A.K. Gera, Inspector made an entry about the repairs at Uphaar. On 14.6.97 all the three of them gave a report also regarding the repairs carried out by them.

2.19 According to the prosecution, there was load shedding between 15.55 Hrs. and 16.55 Hrs. in the Green Park area. At about 5 P.M. Shri Sudhir Kumar, complainant heard a sound of explosion and saw smoke and fire in the car parking. He immediately informed the Uphaar staff to call the police and Fire Brigade. At 5 P.M. Green Park Complaint Centre received information about flash at Uphaar Sub Station and Sh. Fateh Chand Lineman was sent to attend the complaint at 5.02 P.M. It was also alleged that the Delhi Fire Service received a complaint over phone from Shri K.L. Malhotra, DGM, Uphaar about the fire in the Uphaar building at 5.10 P.M. on 13.6.97 which was conveyed to the Bhikaji Cama Place fire station and other stations. Fire tenders reached Uphaar from the Bhikaji Cama Place fire station, at about 5.17/5.18 PM and fire fighting operations started. It was alleged that according to the CFSL expert, Electrical Inspector Shri K.V. Singh, EE (Electrical), PWD, Prof. M.C. Kothari of IIT Delhi the DESU transformer was the source of fire. According to the experts on account of improper repair in the morning constant and intense sparking took place leading to one cable of 'B' Phase falling down. Oil that leaked out caught fire and came out of the room; as there was no barrier the vehicles nearby caught fire leading to a

major fire resulting in hot toxic gases. According to experts electric sparking effects were detected on the nut-bolts, bus bar and fastener-end.

2.20 The CBI alleged that out of the 59 persons dead, post mortem was conducted in respect of Capt. M.S. Binder and the cause of death was found to be suffocation/asphyxia. It was also revealed that the cause of death of persons, were inhalation of Carbon Monoxide and other gases and there were no burn injuries or evidence of stampede or any other cause other than suffocation. It was alleged that there were several structural and other fire safety deviations including means of escape, at Uphaar building and there were no trained Firemen, there was no fire alarm system, there was no emergency light and the exit gates were closed and on account of pitch dark and toxic gases the 59 persons died and about 100 were injured.

2.21 The charge sheet also alleged that Sh. R.M. Puri, Director of Uphaar Company, Shri K.L. Malhotra, Deputy General Manager, Shri R.K. Sharma, Manager, Shri Ajit Chowduary, manager Shri Nirmal Singh Chopra, Assistant Manager of Uphaar who had been running the Uphaar were present at the time of the fire incident in the building but they, without cautioning the patrons seated inside the auditorium about the fire and heavy smoke on the ground floor of the building which was spreading, safely escaped in their vehicles. It was further alleged that the evidence showed that Shri Man Mohan Uniyal the Gatekeeper on duty

in the balcony of the Uphaar building had left his duty point before arrival of his reliever after closing and bolting one plank of each of the two entry/exit door on left side of the balcony and completely bolting the middle exit/entry door without caring for the safety and lives of the patrons inside the balcony. The CBI alleged that the DVB 1000 KVA transformer, which was the cause of fire in the morning of 13.6.97 and subsequent cause of fire in the afternoon at about 5 P.M. which resulted in the death of 59 persons on account of the fire and emission of dense toxic gases, was improperly repaired by Shri B.M. Satija, Inspector, DVB, Shri A.K. Gera, Inspector, DVB and Shri Bir Singh, Senior Fitter in the morning without the proper equipments like crimping machine which resulted in loose fitting/connections causing sparking in between the B-phase of the transformer at the place where the repair was carried out in the morning. It ultimately resulted in loosening and falling of one of the cables of the B-phase (of the said transformer) on to the radiator fin causing a hole resulting in leakage of transformer oil which caught fire on account of the rise in the temperature due to sparking effect. By such improper repairs the said DVB officials, having knowledge that such acts on their part were likely to cause the death of the public inside the building in case of the transformer catching fire again on account of such improper repair contributed to the death of such 59 persons and injury to about 100 of the patrons, who were seated in Uphaar auditorium/balcony on 13.6.97 at the time of incident. The said 3 DVB officials acted dangerously being aware that certain specific harmful consequences of their improper repair

of the transformer would or could follow endangering the lives of the public in the Uphaar building.

2.22 The charge sheet alleged that closure of the side gangway on the right hand portion of the balcony, of the exit gate on the right side portion of the balcony, the non-working condition of public address system, lack of emergency lights, unavailability of fire alarm system, non-availability of proper fire safety measures in the car parking area and such other deviations from structural, fire safety and means of escape point of view contributed to the death of the said 59 persons and injury to about 100 persons seated in the Uphaar auditorium. These deviations were within the knowledge of Shri Sushil Ansal and Gopal Ansal, Ex-Directors of the said Uphaar Cinema who continued controlling the management and affairs of the said cinema hall even as on the date of the incident of fire; it amounted to criminal negligence on their part and thus they contributed by their criminal negligence to the death of the said persons and injury to others.

2.23 According to CBI, Sh.S.S.Sharma and Sh.N.D.Tiwari, Administrative Officers of MCD as had contributed to the death of the said 59 persons and injury to about 100 of them by their criminal negligence of having issued unauthorized 'no objection certificates' facilitating renewal of the temporary permits of Uphaar by the Licensing Authority. It was also alleged that H.S.Panwar, Divisional Officer and Sh.Surender Dutt, Station Officer, DFS

contributed to the death of the above said 59 persons and injury to about 100 of the public seated in Uphaar theatre by their criminal negligence for having issued NOCs for the fire safety and means of escape point of view inspite of such inadequacies in regard to compliance with minimum prescribed standards.

2.24 According to the charge sheet, Sh. S.N. Dandona, contributed to the death of 59 persons and injury to about 100 of the public seated in the Uphaar theatre on 13.6.97 by his criminal negligence having recommended approval of the installation of the 8 seater box on the right side, top portion of the balcony in 1978, resulting in closure of the side gangway and the closure of the right side exit gate of the balcony in 1979- though the approval of 100 additional seats had been cancelled by the Administrator of Delhi by a notification- in view of which the licence should have been directed (by the said Sh.S.N.Dandona) to restore the seats and provide side gangway and the side exit gate on the right hand side portion of the balcony. His acts of allowing installation of 15 more seats in 1980 resulting in a total of 302 seats in the balcony, (which required 4 exit gates for the public to safely escape from the balcony in case of emergency) but allowing only 3 exits at the same time all amounted to criminal negligence and contributed to the death of the said persons and injury to others.

2.25 These circumstances, alleged the CBI, constituted commission of offence under Section 304, 337, 338 IPC r/w. 36 IPC and substantive offences thereof and under Section 14 of Cinematograph Act, 1952 by R.M.Puri (A-3), K.L.Malhotra (A-4), Radha Krishan Sharma

(A-5), Nirmal Singh Chopra (A-6), Ajit Chowdhary (A-7), Manmohan Uniyal (A-8) and under Section 304, 337, 338 IPC r/w 36 IPC and substantive offences thereof by Brij Mohan Satija (A-9), A.K.Gera (A-10) and Bir Singh (A-11). It was also alleged that the circumstances constituted commission of offence under Section 304 (A), 337, 338 r/w 36 IPC and substantive offences thereof and under Section 14 of Uphaar tograph Act, 1952 by Sushil Ansal (A-1), Gopal Ansal (A-2), S.N.Dandona (A-12), Shyam Sunder Sharma (A-13) and N.D.Tiwari (A-14) and further under Section 304-A, 337, 338 IPC r/w.36 IPC and substantive offences thereof by H.S.Panwar (A-15) and Surender Dutt (A-16).

2.26 Based on the charge sheet, after hearing counsel, the trial court framed charges. The Charges against Sushil Ansal and Gopal Ansal were

(1) On 13.6.97 being licensee/owners of Uphaar cinema, GPT Ltd they caused the death of 59 persons/patrons besides causing simple and grievous hurt to about 100 persons on account of fire in DVB transformer and spread of highly toxic gases inside the building by their acts and omissions of allowing installation of the DESU/DVB transformer in the Uphaar cinema building and various deviations from structural and fire safety point of view, in contravention of various Acts and Rules by their negligent acts in not facilitating the escape of the patrons seated inside the theatre on 13.6.97 to view ' ' BORDER ' ' movie during 3 to 6 p.m. matinee show, which were negligent

not, amounting to culpable homicide and thereby committed an offence punishable u/s 304A IPC r.w 36 IPC;

(2) They, on the said date time and place, both caused simple and grievous hurt to about 100 persons/patrons who had come to Uphaar cinema to view ' BORDER ' movie during 3 to 6 p.m. matinee show on account of fire in DVB transformer and spread of highly toxic gases inside the building by their negligent acts and omissions of showing deviations from structural and fire safety point of view in the building resulting in spreading of highly toxic gases generated due to severe fire in the DVB transformer in stalled in the Uphaar cinema and on account of such negligent acts so as to endanger human lives and personal safety of other patrons seated inside the cinema theatre and thus they committed an offence punishable u/s 337/338 IPC r.w. 36 IPC.

(3) Both the said accused, on the above said date time and place were the licensee/incharge of Uphaar cinema (Ansal Theaters and Clubotels Pvt Ltd.) and used the said Theatre/cinematograph, and allowed it to be used despite deviations from structural and fire safety angles etc in contravention of the provisions of DCR, 1953 and Delhi Cinematograph Rules 1981 and thereby committed an offence punishable u/s 14 of Cinematogtraph Act 1952.

2.27 Against H S Panwar and Surender Dutt the charges framed were that:

(1) On or about 13.6.97 at Uphaar Cinema (GPT Ltd Ltd/ Ansals Ltd) they, within the area of P S Hauz Khas caused death of 59 persons/patrons besides hurt/grievous hurt to about 100 persons/patrons seated inside the Uphaar cinema to view " BORDER ' ' movie during 3 to 6 p.m. matinee show on account of fire in the DVB transformer and highly toxic gases by their acts and or omission by issuing 'No Objection Certificate' without ensuring provisions of fire safety and means of escape in the cinema for renewal of cinematograph license in contravention of the Act and rules which were negligent acts not amounting to culpable homicide and thereby committed an offence punishable u/s 304 A IPC r.w. Section 36 IPC;

(2) Both of them, on the said date, time and place caused simple and grievous hurt to about 100 persons/patrons who had gone to the Uphaar cinema hall to view 'BORDER' movie during 3 to 6 p.m. matinee show by allowing the highly toxic gases generated inside the building due to severe fire which took place in the DVB transformer installed in the said Uphaar cinema building and they negligently issued 'No Objection Certificate' for renewal of cinematograph license for Uphaar cinema without ensuring the provision of fire safety and means of escape in the Uphaar cinema and thereby committed an offence punishable u/s 337/338 r.w. 36 IPC.

During the pendency of trial, accused Surinder Dutt expired and proceedings against him abated.

2.28 The charges against Shyam Sunder Sharma & N D Tiwari were as follows:

(1) Both, on or about 13.6.97 at Uphaar cinema caused death of 59 persons/patrons in Uphaar cinema who had come to view ' BORDER ' movie during 3 to 6 p.m. matinee show on account of fire in DVB transformer and highly toxic gases by their acts and omission in issuing 'No Objection Certificate' without inspection of the cinema in contravention or authorization of the Act and rules for renewal of cinematograph license of Uphaar cinema which was negligent act not amounting to culpable homicide and thereby committed an offence punishable u/s 304 A IPC r.w 36 IPC.

(2) They both on the said date time and place caused simple and grievous hurt to about 100 persons/patrons who had come to Uphaar cinema to view ' BORDER ' movie during 3 to 6 p.m. matinee show by allowing the highly toxic gases generated inside the building due to severe fire which took place in the DVB transformer installed in the said Uphaar cinema building and the gases spread inside the cinema building and they negligently issued 'No Objection Certificate' for renewal of cinematograph license for Uphaar cinema without ensuring the provisions of the fire safety and means of escape in the Uphaar cinema and thereby committed an offence punishable u/s 337/338 IPC r/w 36 IPC.

2.29 The Charge against Shri S N Dandona was under Section 304A/337/338 IPC r.w 36 IPC, to which he pleaded not guilty and claimed trial. He expired and proceedings against him abated.

2.30 The Charges against B M Satija, A K Gera and Bir Singh were that:

All of them, on 13.6.97 at Uphaar cinema committed culpable homicide not amounting to murder by causing death of 59 persons/patrons beside simple and grievous hurt to about 100 persons/patrons seated inside Uphaar cinema building to view 'BORDER' movie during 3 to 6 p.m. matinee show by their acts and omission in not properly repairing the DVB transformer installed in the said cinema building in which fire took place in the morning of 13.6.97 by using the required crimping machine with the knowledge that the said act on their part was likely to cause death or such bodily injury to others which was likely to cause death as a result of such failure/faulty repair on their part, fire took place again in the said DVB transformer at about 5 p.m. resulting in spreading of fire and highly toxic gases and death of 59 persons and they all thereby committed an offence punishable u/s 304 r/w 36 IPC.

2.31 The Charges against R M Puri, K L Malhotra, R K Sharma, N S Chopra, Ajit Choudhary and Man Mohan Uniyal were that:

All of them, on or about 13.6.97 at Uphaar cinema committed culpable homicide not amounting to murder by causing death of 59 persons/patrons beside simple and grievous hurt to about 100 persons/patrons who had come to view ' BORDER ' movie during 3 to 6 p.m. matinee show and by their acts and omissions fire took place inside the transformer installed in the Uphaar cinema building and highly toxic gases generated inside the cinema and spread inside the theatre and by their failure to inform, alert and facilitate the patrons seated inside the theatre to escape from inside

the building their act was in violation of rules knowing that their said act was likely to cause death or such bodily injury which was likely to cause death and they thereby committed an offence punishable U/s 304 r/w 36 IPC.

2.32 During the pendency of trial, accused K L Malhotra, and R M Puri expired and proceedings against them stand abated.

III. SUMMARY OF ORAL EVIDENCE

3.1 PW 1 Ms. Kanwaljit Kaur deposed having gone to see the movie "BORDER" in the Cinema on 13.6.97, with her husband, daughter Payal and a friend, after the movie had started; the torch man showed them their seats, which were towards right in the fifth row of the balcony. She deposed that after interval, they heard a noise, like a bomb-blast and thereafter there were cries warning of fire. Looking down the stairs they found the hall empty; the movie had stopped and there was black smoke. The witness stated that there was no announcement system and there were no emergency lights. She felt suffocated; it was pitch dark. She states about commotion in the balcony, patrons saying that the balcony doors were closed, after which she became unconscious. She also deposed that her husband went to find out, after which she did not see him. In the cross examination, an attempt to confront her with variation in the statement made to CBI was made; however, it was recorded that the previous statement had mentioned that the two doors were shut.

3.2 PW 3 Raman Kumar deposed that on 13.6.97 he, with his father Kushal Kumar, sister Kanika and his father's friend Kartar Malhotra and his wife Kusum Malhotra went to the watch the movie at the Cinema and sat in the second row towards the left facing the screen. After the interval he noticed smoke coming inside through air-conditioner duct and lights went off. According to him, no exit lights were on, there was no alarm and nobody from management was there. He deposed that patrons were trying to push the main door but it was locked. They got up and caught hold of each other's hand and managed to reach the tea stall opposite to cinema hall where they were given drinking water. He then realized that his father Kushal Kumar and his sister Kanika and Kartar Malhotra were not with him. He could not enter the cinema hall again, due to smoke. After some time a Hydraulic Fire Tender arrived. One Fireman climbed the hydraulic ladder to second floor but he was unable to break open any window. He could not do so without axe or any other equipment. He managed to get some wooden plank from a nearby building but was not able to break the window. Lot of people jumped from one building to another. He watched people bringing their babies, children and other persons dead out of the cinema building. He saw two Firemen with torches were present there. On further enquiry he got the information that people who had died and sustained injury were removed to Safdar Jung hospital and AIIMS. He could to locate the bodies of sister and father at AIIMS. In cross examination, an attempt to point to discrepancy in his previous statement was made; he could not admit or deny whether exit doors were

locked. He volunteered that they were locked. In his previous statement to the CBI, he had not mentioned about absence of anyone from the management in the hall, he had also not mentioned that 3-4 doors (in the balcony) were locked.

3.3. PW 7 Rishi Arora, in his testimony, has deposed that on 13.6.97 he along with his sister Monika went to BORDER at the Cinema hall. After interval he felt some gases in the rear stall and lights went off and it was pitch dark. He, with his sister tried to come out of balcony but were unable to go out. Both felt suffocation due to smoke and gases; it was difficult to breathe and they got stuck in the balcony, for 10 to 15 minutes. He deposed that there was no gate keeper, no torch man, no emergency announcement system, or any emergency light. They somehow managed to reach near the canteen. There was lot of smoke at that place too. After 10/15 minutes, they saw the Fire Brigade ladder. It was very hot, due to fire inside the hall and he fell, while getting down the stair case. Thereafter he lost consciousness .He regained his consciousness in Safdurjung hospital. His parents shifted him to Ashlok Hospital where he was treated for his burns and bleeding problem. He remained there from 13.6.97 to 20.6.97. He proved the death Certificate of his sister who had expired in the hall as Ex. PW 7/A. In his cross examination, he admitted not knowing anyone from the management, but also deposed that no one went to help people, at the time of the incident. He also deposed about disruption of electricity supply before the incident.

3.4 PW 11 Hans Raj deposed that on 13.6.97, he, with his friend Tej Bir and two sons had gone to see BORDER at the Cinema hall. They had balcony tickets. Before the interval lights went off; after interval they noticed lot of smoke and thereafter lights went off. The balcony doors, deposes this witness, were locked. There was lot of smoke and gas; It was difficult to breathe. This witness deposes about absence of announcement systems, and lights. The public (patrons) near the balcony door pushed it open. They went out to the lobby, which was filled with smoke; nothing was visible. He became unconscious. The fire brigade arrived. He regained consciousness for a while and again lost it. He deposed about Tejbir breaking open a window pane. He was removed to hospital where he was admitted till 18.6.97. He proved his Discharge Slip as Ex. PW 11/1. He deposes, in cross examination about many scooters in the premises, and also that he was in the canteen outside the balcony for a while, between 15 and 45 minutes. He stated that there was no help, and that it was dark. He deposes that when he went in there was a gatekeeper to check the tickets and that exit lights were visible on top of the door. He admitted that cinema doors are kept shut to prevent light from outside disturbing the movie viewers. He also deposed about smoke coming from left side of the screen. He was in the last row in the middle of the balcony; he mentions about commotion and that balcony doors were shut. Half the people were standing and half were sitting, a situation which continued for 5-7 minutes. He deposes about lot of pushing and people trying to go out, without a care for others. He did not know the number of exits, but deposes about one separate exit and one entry. He denied the suggestion that there was light, which could not be

seen due to smoke and also says that light from the outside was visible after the windowpane was broken.

3.5 PW 59 Sanjay Singh, a tenant on the ground floor of the building deposed to being present in his shop on 13.6.97 at about 5 p.m.. He deposed to seeing the transformer on fire and 2/3 staff members along with Mr. Malhotra were trying to extinguish it. He stated that after some time, there was another loud bang which caused black smoke to reach his office. He evacuated the office and fire brigade officials extinguished the fire. He deposed to one phase in the electricity connection not functioning in the morning, and hearing about a small fire incident at the time.

3.6 PW 63 Sudhir Kumar Security Guard deposed that on the morning of 13.6.97, he heard sound of an explosion, inside the building upon which, he went inside and saw fire in the DVB transformer. He rang up the emergency 100 number as well as DESU officials. Information was passed on to 101 number, P S Hauz Khas about the fire and then, the chowkidar of building informed Mr. Malhotra, Manager of Uphaar Cinema. Fire brigade officials, says the witness, extinguished the fire and the police of PS Hauz Khas also reached the site. The Manager of Uphaar Cinema inspected the entire area and thereafter, the morning show was displayed. The witness deposed that the second show was displayed between 3 to 6 p.m. and at about 5 p.m , he went upstairs to find out about his reliever. When he along

with his reliever was coming down, he noticed some smoke coming through the stairs on seeing which, he concluded that fire had occurred, in the transformer. He heard the noise of cries of the public. He went to the staircase which led on to the fourth floor and where there was a door. He pushed that door open. He asked the public to go upstairs, but at the end the staircase was locked. He broke open the door and tried to use another staircase leading to top floor which was at some distance from there. The door was found bolted; he tried to open it. A lot of smoke and gas was there. He immediately closed the door. He entered inside the office on the fourth floor, when members of the public followed him. The Fire Brigade officials came and with the help of Hydraulic lift rescued them. He did not, however visit the parking area in the building. His statement Ex. PW 63/A was recorded on the basis of which the FIR was lodged. The police collected various articles which were taken into possession by memo Ex. PW 63/B. He deposed that Sushil Ansal and Gopal Ansal were owners of Uphaar Cinema. Mr. Puri was Director, Mr. Malhotra, Mr. Chopra, Mr. Sharma and Ajit Choudhary were Managers of Uphaar Cinema.

3.7 PW 4 Ms. Neelam Krishnamurti's children Unatti and Ujjwal had gone to watch 'BORDER ' in the cinema hall for that particular show. She and her husband were present in their office. Her daughter informed her that they would return back by 7.30 p.m. but did not do so; she had no information about the children. They reached their home at about 8.05 p.m. to 8.10 p.m., but there was no information about the children. Vishal Bakshi a friend telephoned to know about the welfare of the children; when told that they had gone to watch

the movie, he informed them about the fire. The witness and her husband immediately rushed to the spot around 8.30 p.m. and found that entire area had been cordoned and nobody was allowed inside. She alongwith Vishal and her husband went to AIIMS and in the OPD she found dead body of her children. She had preserved the tickets of her children. She deposed to having gone to the Cinema, later, along with the Commission and at that time she saw that her children were sitting on A4 and A5 which was the first row in balcony on right hand side. She deposed that, there was no gangway, no exit on the right hand side. She proved the photocopies of the tickets as Ex. PW 4/ A1 and A2 and also proved the Death Certificates as Ex. PW 4/A3 and A4.

3.8 PW 5 Ajay Mehta deposed that in 1997, his family consisted of his wife Rekha Mehra and their two sons Kunaljit Mehra and Vedant Mehra. He deposed that on 13.6.97, he was in a meeting in Golf Link at about 5 p.m. When about to proceed to his house, at that time, he received a call from his secretary saying that his wife was desperately trying to get in touch with him and he should keep his mobile line free and that his wife was sounding desperate. Thereafter, he rang up his house from where became aware that his wife and younger son had gone to Uphaar to watch ' BORDER '. Immediately, his wife called him on his mobile at about 5.19 p.m. and told him that fire had taken place in the cinema hall and they had managed to break the balcony door and managed to come in the lobby of cinema hall with great difficulty. There was gas and smoke all around and also total darkness inside

the building and that nothing was visible. She was feeling suffocated and asked him to go and to save them. The witness deposed that thereafter, she must have collapsed and he could not reach back to her on telephone as the phone got disconnected. He rushed to Uphaar Cinema and found a crowd gathered there. The police and Fire Brigade arrived at the spot. At that time, he searched for his wife and son on the roof top but they could not be traced. He then received a telephone call from his brother in law that dead bodies of his family members had been brought to Safdur Jung Hospital. He immediately rushed to Safdur Jung Hospital and found the dead bodies of his wife and son Vedant Mehra. There was black soot on their nose and mouth. The doctor told him that the cause of death was Asphyxia. He proved the copies of Death Certificates as Ex. PW 5/A and B. The witness also produced the print out of his mobile call statements, issued by the service provider, for the period 24-5-1997 to 23-6-1997.

3.9 PW 6, Harish Dang deposed that his sister Renu Dawar, resident of Kirti Nagar, due to vacations, visited their house prior to 13.6.97 with her children, Heena and Shristi. On 13.6.97, his wife, his two children, his sister, four nieces and one nephew went to the Cinema during for the 3 to 6 show of ' BORDER '. At about 6, he received information that a fire incident had taken place at Uphaar Cinema. He reached there immediately and found a crowd gathered. He tried to locate his family members. On receiving information that the injured were removed to AIIMS Hospital, he went there; he could locate his wife Madhu, his son Moksh, his nephew Sagar and Shristi (his niece) lying dead. He was able to locate Heena(his

niece), Megha and Resam at Safdur jung hospital. The bodies of his sister Renu and his niece Shristi were found at AIIMS

Hospital. He proved the Death Certificates as Ex.PW 6/1 to 8.

3.10 PW 8 Amit, deposed that on 13.6.97 he along with his maternal uncle Raj Pal went to watch the movie 'BORDER', in the 3 to 6 show at Uphaar Cinema. While the show was on, the lights went off and smoke arose before the screen. Noise was heard from Auditorium and people started going out. There was lot of smoke. They tried to go out, but doors were closed and he could not open them. They were able to break open one door leading to the canteen. There was a lot of smoke and nobody was there to help. They reached canteen but were unable to find way out. He managed to break one big glass and provide space to Fire Brigade Officials but it was very hot; he fell down and suffered injuries on his hands and feet. He was removed, in a semiconscious condition, to AIIMS Hospital; and maternal uncle was also taken to the hospital. He was discharged from there. He went home and became unconscious. His mother took him to the hospital, where he was treated by family doctor. The witness mentions about being given money by his maternal uncle, and his asking him to inform his mother; later the uncle lost consciousness. During cross examination, he admitted that when he went out during interval, a gatekeeper was present. The witness was seated in the second last line of the balcony. He also mentioned that when he reached the movie hall, there was no gateman, and that a torch man guided them to their seats. An attempt to confront

him with discrepancies between what was recorded in the statement to the police earlier, and the deposition was made, concerning his reaching home and narrating about the incident to his mother. He was also confronted with his previous statement, about the doors in the hall.

3.11 PW 9 Satish Khanna deposed that on 13.6.97, his sister Geeta along with her husband and two daughters went to Uphaar Cinema to watch BORDER in the 3 p.m to 6 p.m show. At about 5.17 p.m., he received a call from his sister that fire had taken place in the Cinema hall, and requested him to save her. He learnt that the fire brigade had reached there. He passed on the information to the father in law of his sister and reached Uphaar Cinema where lot of people had gathered. He was informed that the injured had been shifted to AIIMS. He reached AIIMS and found dead body of his sister and her husband. He got the information from father in law of his sister that dead body of his sister's two children were located in Safdurjung Hospital.

3.12 PW 10 Krishan Kumar Kohli, deposed that about receiving a call from PW-9, on 13.6.97 at about 5.20 p.m about fire at Uphaar Cinema and that his sister and her husband were present there. He noted down the mobile number of his sister. He tried to contact her at 5.22 p.m; she informed that she was unable to breathe, due to smoke and that her children were missing. He called up her husband but that call was received by Geeta Kochar, whose voice was inaudible due to lot of noise. He again contacted them at about 5.30 but nobody

attended the call. Thereafter, he went to Uphaar Cinema and found the passage (to the hall) blocked. He reached AIIMS hospital and located the dead bodies of sister and brother in law of Satish Khanna and also found dead bodies of the two children of Geeta in Safdur Jung hospital.

3.13 PW 12 Satpal Singh deposed that on 13.6.97 at about 5/5.15 PM, he got a call from Ravi Dutt Sharma, a resident of his village. He informed him about the fire in Uphaar Cinema. He deposed that he managed to come out but Virender Singh, Brahmpal Singh and Kartar Singh (all relatives of the witness) who had accompanied him were stuck up inside the balcony. He reached the cinema along with Mahipal and Mahesh and came to know from police officials that everybody had been shifted to AIIMS and other hospitals. He ran towards the balcony from the parking side and found the doors closed. He kicked the door open, found darkness and saw some children and ladies lying unconscious on the floor. On going further into the lobby he saw some light from a window and at some distance he located his cousins Kartar Singh, Virender Singh and Brahmpal who were lying unconscious. They were removed to the hospital by police officials. In the hospital all his three cousins were declared dead. He deposed that there was lot of smoke inside the cinema hall and it was difficult to breathe. He suffered chest pain due to smoke, for which he was treated.

3.14 PW13 Raman Singh Siddhu deposed that on 13.6.97 his wife Kanika along with two daughters Malvika and Saloni and his sister Malika Mann with her three children, his friend Ajay Mehra, (with his wife and son) went to the Cinema to watch BORDER , in the 3 p.m. to 6 p.m. show. He got information at about 5.30p.m. on telephone from his father about the fire. He reached the spot at about 6.20 p.m.. He reached AIIMS crossing and found that the passage blocked by the police. He therefore, contacted his brother in law Jagdeep Mann and Ajay Mehra who informed him that his sister Malika Mann and Dhruv Mann had been located and seemed to be alive. The dead bodies of his two daughters and two daughters of Jagdeep Mann were located. He reached Uphaar Cinema and got the information that bodies had been taken to Safdurjung hospital. He located his daughter Malvika . The bodies of his sister, her two daughters, her son, sister's maid servant were brought there and they all were declared dead. The wife and son of his friend Ajay Mehra were also declared dead. Thereafter, he went to Safdur Jung hospital where he located the dead bodies of his wife and younger daughter Saloni.

3.15 PW 66 Surjit Singh, owner of Mahindra Hospital deposed that on 13.6.97 victims of Uphaar fire incident who with less injuries were brought to that hospital and victims of serious injuries were removed to AIIMS hospital. The injured so admitted were treated in the hospital. He deposed that on 13.6.97 at about 8 p.m, he came to know that his sister, her husband and her daughter were also injured in the fire incident. He went to AIIMS hospital

where he found that his brother in law Inderjit Singh Bhalla had died; he traced his sister Kanwaljit Kaur and her daughter Payal and brought them to his hospital where they were treated. On 20.8.97, he had given the photocopy of the treatment record to CBI which was seized vide memo Ex. PW 66/A, the original treatment record collectively proved as Mark X1 to X14.

3.16 PW-14, Gopichand Babuta, reached Upahaar to pay his electricity bills, when he noticed fire in the theatre. He tried to help, but the police prevented him. Eventually, he helped in removing the A/C after which the smoke came out. There was lot of darkness and smoke inside; he entered the balcony and saw people lying on the floor. He helped rescue them; even lifted them on his back. 8-9 such people were so rescued; he was affected by smoke, and was treated at Safdarjung Hospital. When rescue operations took place, none of the officers of Upahaar cinema were available at the site. He underwent costly medical treatment later. He deposed in cross examination that his statement was recorded about 2 ½ months after the incident, by the CBI. There was no staircase at the back of the picture hall, but a wooden ladder; they fixed it and went upstairs. There was a construction staircase, used by the persons accompanying him, used by them, to climb to the adjacent building. Thereafter, they took out the A/C; smoke started coming out. (later clarified that they did not go to the adjacent building, but reached the top floor). Prior to the removal of the airconditioner the smoke was not coming out. They made a passage for people to get out. If

there had been a proper passage, the people would have used it. There was darkness because of smoke. He went to the balcony where people were lying unconscious; nothing was visible inside; and none were present to guide anyone. He did not remember how many doors were opened by them after they went inside. People were saved through the back door; they could not go out of front door, because of smoke. Front doors were also shut, because of which people could not be taken out. The A/C was in the balcony, near the roof. It was 4'x6', and a big one.

3.17 PW 15 Babu Lal Jindal, Assistant Engineer, Municipal Corporation of Delhi (MCD) scrutinized the building plans. After seeing MR No. 341/97, he deposed that M/s Green Park Theaters Associated (P) Ltd. submitted building plan on 3.2.73 for sanction which was entertained by MC BY File No. 117/B/HQ/73 dated 3-2-1973. Mr. V K Gupta, the then Assistant Engineer examined the case. He proved Scrutiny Report as Ex. PW 15/A. The matter was placed before the Building Plan Committee and the building plan was sanctioned on 3.2.73 and sanction was issued on 22.3.73. He also proved Sanction Letter Ex. PW 15/B. This sanction was received by the Architect / Authorised Signatory on behalf of M/s Green Park Theaters Associated (P) Ltd. The endorsement on this letter was by the Architect, A Sen Gupta whose writing and signature was identified by the witness and marked as Ex. PW 15/C. He deposed that the application was accompanied by copies of ownership documents i.e. Lease Deed Ex. PW 15/D in favour of M/s Green Park Theater Associated (P) Ltd. and other documents consisting of Memorandum and Articles of Association of M/s Green Park

Theaters Associated Pvt. Ltd. which was proved as Ex. PW 15/E, a resolution of Director of M/s Green Park Theaters in favour of Gopal Ansal being an Authorised Signatory as Ex. PW 15/F. He proved the Building Plan Application Form submitted by M/s. Green Park Theaters Associated (P) Ltd as Ex. PW 15/G, Authority letter in favour of A S Kapoor and V K Bedi, Architects as Ex. PW-15/H and I. The building plan consisting of sixteen drawings were submitted by M/s Green Park Theaters Associated Pvt Ltd. The said drawings, Ex. PW 2/A9 lay out plan showing the site in question of cinema plot. Ex. PW 2/A14 is a detail of area site plan of cinema building. In this plan, details of each floor has been shown. Ex. PW-2/A23 is basement floor plan, in the basement, parking for scooters, cycles, Generator room, AC Plant room, blower room, ramp and staircases had been shown, Ex. PW 2/A11 is parking lay out plan at ground floor. In this plan, number of car parking is 15, Scooter 200 numbers, cycles 300 numbers, restaurant ,ticket foyer, transformer, HT ramp, Manager Room, Toilet blocks, staircases have been shown. Ex. PW 2/A19 is a stilt floor plan, the details of which are mentioned in Ex. PW 2/A11. Ex. PW 2/A18 is first floor plan and in this plan auditorium of cinema hall for 750 seats has been shown, foyer, lower class foyer, toilet blocks, stair cases, lift and duct has been shown, Ex. PW 2/A13 is the second floor plan showing a seating capacity of 250 seats; rectifier, Operation Rest Room, sweeper room, toilets, staircases have been shown. Ex. PW 2/A12 is the third floor plan for Administration Office, toilet blocks and stair cases. Ex. PW 2/A16 is a mezzanine plan for mezzanine foyer, toilet block and stair cases. Ex. PW 2/A15 is a longitudinal Section CC showing accommodation of basement,

stilt, car parking, auditorium, mezzanine floor, second floor, loft and third floor with a total height of the building, as 74 feet.

3.18 Ex. PW 2/A20 is Section AA showing the detail of parking in basement, stilt car parking and position of screen etc., Ex. PW 2/A24 is front elevation showing the elevation of all floors above ground level, Ex. PW 2/A17 is rear elevation showing the elevation of all floors above ground lever, Ex. PW 2/A10 is side elevation showing elevation of the building from the side, Ex. PW 2/A22 is a terrace floor plan and Section DD through staircase and part elevation. In this elevation, basement, ground floor, first floor, mezzanine, second floor, loft, third floor has been shown, the total height of the building has been shown as 74 feet. In Section DD, the machine room on top of stair case has been shown. Ex. PW 2/A21 is a loft plan, in these drawings, the title has been mentioned as proposed addition and alteration to cinema building under construction as per plans sanctioned by Municipal Corporation of Delhi by file No. 436/B/HQ order dated 30.5.72 at Green Park belonging to M/s Green Park Theaters Associated Pvt. Ltd. these plans were signed by Sushil Ansal as Director, A Sen Gupta as Architect. He deposed that after sanction of building plan, sanction was issued under the signatures of V K Gupta, the then A.E. Building Head Quarter on behalf of Deputy Commissioner, MCD.

3.19 PW 17 Ram Kumar Gupta, Junior Engineer, MCD deposed that in the Building department, Head Quarter, the building plans for residential properties above 400 Sq. Yards and all commercial properties were received for sanction by MCD. He deposed that Ex. PW 15/A is a scrutiny proforma of the building File No. 117/B/HQ/73 dated 3.2.73 in respect of Uphaar Cinema Building and applicant was M/s Green Park Theaters Associated (P) Ltd. As per the report of the then Junior Engineer regarding coverage on each floor of said cinema hall. The total area of the plot was shown as 2480 Sq. Yards in the report. This report was marked to Assistant Engineer (Building) on 21.2.73 and was again put up by the said Junior Engineer. According to the report, the compounding fee of Rs.20,294.30P was proposed. He has deposed that notices dated 1.3.73 and 5.3.73 were sent to M/s Green Park Theaters for providing proof of ownership and existing structure at site to be shown in plan by notice dated 1.3.73 and in notice dated 5.3.73, the applicant was informed that since the construction being carried out at site was unauthorized due to change of ownership, therefore, the structure carried out unauthorizedly should got compounded. He identified a letter dated 2.3.73, a response to the notice dated 1.3.73 signed by Managing Director of M/s Green park Theaters Associated (P) Ltd. He deposed that the letter dated 23.2.96 Ex. PW 17/A was sent by Mrs. Vimla Mehra to Commissioner Municipal Corporation of Delhi. It pertained to an inspection report of thirteen cinema houses including Uphaar Cinema. Eleven objections in respect of Uphaar Cinema were enclosed with this letter and on receiving it along with enclosures, a letter Ex. PW 17/C was issued to all Assistant Engineers for inspection of the cinemas,

(mentioned in Ex. PW 17/B). According to the witness, he with R K Sharma, J E Building Head Quarters and Vinod Sharma, Junior Engineer Building inspected the cinema Hall pertaining to jurisdictions of the Central and South Zone including Uphaar Cinema on 30.4.96. They prepared a report mentioning about compliance with and rectification of the objections raised in the letter dated 23.2.96. The report is Ex. PW 17/D. The report was submitted to the Assistant Engineer R K Gupta who made an endorsement Ex. PW 17/E and marked it to the Executive Engineer, Building. This report also contained the inspection of Uphaar Cinema. He proved the Compliance Report Ex. PW 16/E of thirteen cinema including Uphaar Cinema. He also proved the letter dated 6.2.97 of Shri T N Mohan, DCP (Licensing) addressed to Shri V K Duggal for annual inspection report of the cinema halls as Ex. PW 17/F which was marked for necessary action to all DMCs and also S.Es. He proved the letter dated 3.10.96 addressed to V.K Duggal sent by Additional Commission of Police (Licensing) as Ex. PW 17/G for sending inspection reports in prescribed proforma. He proved the letter dated 23.7.96 of Mrs. Vimla Mehra addressed to O P Kelkar for sending annual inspection report of the cinemas on prescribed proformas.

3.20 In cross examination, this witness deposed about lack of awareness from where the list of deviations received with letter Ex. PW-17/A was obtained. He stated that the area of the stilt floor was 4811.4 square feet. According to him, the area for parking had only been specified, but not calculated. The Upahaar cinema was constructed according to the 1959

Building bye laws. In terms of Bye law 54(2), subject to provision for ventilation, partition in basements were permissible. No objection with regard to standard of ventilation was however, raised when the cinema was inspected. He mentions that there were 11 deviations when the building was inspected. Deposing about the creation of additional space between the stilt floor and the auditorium flooring, he stated that this was in gross violation of the sanctioned plan. The inspection found that wooden planks had been removed and rolled steel joists were still existing, and fixed at a height of 7-8 feet. The third objection pertained to letting out of third floor two four concerns; the sanction was for administration of the cinema. The area for such office was 53.6' x 40.6'; the existence of a homeopathic dispensary by providing a wooden plank was not only unauthorized but also a fire hazard. In the last inspection, it was found that the dispensary was located at the back of the transformer room on the ground floor; this statement was clarified, after seeing the sanctioned building plan, so as to say that the dispensary was behind the low tension room, adjacent to the transformer room. The witness deposed to rectification of Objection Nos 6 and 7. He delineated the procedure for proposing changes in sanction, saying that if any portion is to be deleted, it has to be shown in yellow; the portion to be altered is to be in red, and existing portion, to be retained, should be shown in green. He deposed that completion certificate is known as occupancy certificate, and it shows details of accommodation existing on a plot at the time of issuance of completion certificate.

3.21 The witness further deposed about the modification in the plan of the building, on the third floor, and existence of two staircases. He admitted to correctness of Ex. 17/DA, as being approved by MCD. The witness stated that the inspection was not an annual inspection, but to certify the cinema hall, in the light of the 11 deviations referred to the department. When he inspected the premises, the witness did not go into the transformer room. He also deposed about existence of wooden plank on RS Joists, on the stilt floor, when the premises were inspected.

Expert Evidence After Inspection

3.22 PW 2 Shri R N Gupta deposed that in the year 1997, was working as Executive Engineer -I, Karol Bagh Zone of MCD, he was looking after maintenance work. On 1.8.97, he was directed by Engineer in Chief, MCD, to go to the CBI Office at Samrat Hotel. On 2.8.97 he with a team consisting of himself, Arun Kumar, Anand Parkash, Sunil Taneja and Arun Goyal went to CBI office where they met Kishore Kumar, DSP and from there, they were taken to Uphaar Cinema building along with the relevant records and documents. They went there to prepare a report concerning unauthorized construction and deviations from the sanctioned plan given to the owner of the cinema. The team compared the drawings of sanctioned building plan and completion certificate (provided by Mr. Kishore Kumar, DSP, CBI) with the Uphaar Cinema site; and inspected the building except the portion lying sealed. The inspection of the building was of the basement, ground floor, first floor, second floor and

third floor and terrace. He deposed that after inspection, certain discrepancies were observed and they requested DSP, CBI to get a plan prepared of the Cinema building in regard to the existing features/structure and Mr. S S Bhatia was assigned this job. He prepared eight drawings marked PW 2/A1 to A8 of existing structure. They along with these drawings, sanction plan and completion certificate inspected the site of the Cinema building and then, the technical report Ex. PW 2/A titled as Inspection cum Scrutiny Report in respect of the Cinema Building was prepared and submitted by their team before CBI on 11.8.97. The report which was signed by all five team members, contains floor wise deviations. According to the report, the exhaust fans should had been towards permanent open space but they were not found in open space whereas four exhaust fans had been provided in the stairs. They had mentioned all discrepancies, deviations etc, in their inspection report Ex. PW2/A. He deposed that sixteen sanction plans of Uphaar Cinema were given by DSP Kishore Kumar, marked PW 2/A9 to A 24. He has deposed that the Administrative Officer deals with administration of Municipal Corporation of Delhi in each zone and they did not deal with technical matters. According to him, under the Cinematograph Rules, only technical officials like the Executive Engineer/Zonal Engineer (of the Zone) were competent to issue 'No Objection Certificate' regarding structural stability. The completion Certificate PW 2/A25 was given to him by CBI at the time of inspection of Uphaar Cinema building which was issued on 10.4.73. He deposed that Administrative Officers are only concerned with administration of the zone in question. The IO had shown him letters marked PW 2/A 26 and A27; after seeing them he

stated that being non-technical persons, the AOs could not have issued them. In cross examination he mentioned about the site plan provided for parking of 15cars, and 16' wide passage, reflected in the report PW-2/A. He also admitted having visited the Cinema 6-7 times, and further seeing cars in a burnt condition. He stated that when he went there, the shutters in the transformer room were open. He was unaware whether the building was periodically inspected by MCD. In cross examination, the witness admitted that according to the plan there is only one transformer, and no provision for a second transformer. He also deposed that the empty space near the transformer room was to be kept open for movement of vehicles. He also deposed about existence of two staircases leading to balcony and open at the stilt (ground) floor. He however, was not aware about existence of any other emergency exit. He mentioned that there was no provision for emergency exit besides the two staircases; there was also no fire protection wall in front of the transformer room, at the stilt (ground) floor. He also deposed about the procedure followed by the MCD while issuing completion certificate, after inspection of the completed building. He identified the scrutiny file and document Ex. 17/DX, containing the note which led to issuance of completion certificate. The scrutiny file contains more details than the completion certificate. He also stated that PW-2/A mentioned that the sanctioned building plan showed the staircase as enclosed but did not show it as enclosed in the stilt floor. He further stated that the sanctioned building plan Ex. PW-2/DA mentioned that the sanctioned building plan, indicated in yellow that the open wall on the stilt floor had been deleted.

3.23 PW 18 Ram Kumar Sharma stated that according to directions of the Executive Engineer (Building), MCD, he along with Vinod Sharma, R K Gupta, Junior Engineer inspected Uphaar Cinema and six other cinema halls on 29.4.96 and after the inspection, report Ex. PW 17/E was prepared. in the said report, all the deviations, alterations in Uphaar Cinema were mentioned at Point A. He also proved a photocopy of office order delegating the powers to various authorities in Municipal Corporation of Delhi dated 2.6.97 as Ex. PW 18/A. He said that inspection was conducted only once on 29-4-1996; however he had not seen the sanctioned plan, and did not know whether the transformer was installed, or about the number of transformers installed. PW 20 Vinod Kumar, Junior Engineer, MCD, deposed that on receipt of letter dated 23.2.96 Ex. PW 17/A with the questionnaire Ex. PW 17/B regarding inspection of thirteen cinema halls in Delhi, he along with R K Gupta, R K Sharma went to inspect Uphaar Cinema on 29.4.96. The Inspection Report Ex. PW 17/D was prepared which was signed by them at Point A,B and C and whatever deviations were found in the Cinema Halls were mentioned the Report. He mentioned that the state of the building was not compared with the sanctioned plan and that he did not have the completion certificate. He also admitted not having noticed any transformer on the stilt floor. PW 24 K.L Grover, Electrical Inspector deposed that his duty was to enforce the Indian Electricity Rules 1956 framed under the Indian Electricity Act 1910, and the Delhi Cinematograph Rules 1981, (DCR) as well as the Delhi Lift Rules 1942. According to DCR, he was empowered to

enforce these rules by inspecting cinema halls and other buildings to ensure compliance of rules. He stated that a Deputy Electrical Inspector, and Assistant Electrical Inspectors would assist him in inspection and other duties. On 14.6.97, he received a telephonic message at his office from SHO Rajinder Bakshi regarding fire incident in the Uphaar transformer. He also received information from G P Goel, Chief Engineer, Delhi Vidyut Board regarding this incident. He along with Mr. A.K. Aggarwal, Assistant Electrical Inspector reached the spot at about 12.30; he was taken to the rear side, to the parking area where lot of vehicles were being parked. He met Naresh Kumar, DCP (South), and various DVB officials, including G P Goel, Chief Electrical Engineer, Y P Manocha, Additional Chief Engineer, B R Oberoi, Superintendent Engineer, A K Gupta Executive Engineer R K Puram, Deepak Kapoor, Executive Engineer and Mr. Bhardwaj, Assistant Engineer, DVB. The others present were R C Sharma, Deputy Chief Fire Officer, and Dr. Rajinder Singh from CFSL. On the directions of Naresh Kumar, DCP (South), he inspected the parking area of the Uphaar cinema, where there were three rooms. The shutters of those rooms were closed and at his request, the shutters of middle room and third room were forced opened; shutter of the first room was opened with keys. In the first room, the Upahaar cinema's 500KVA transformer was installed, it was intact. In the second room, the DVB's 1000KVA DVB transformer had been installed; it was partially burnt. The LT cable, on the secondary side of the DVB transformer was burnt; transformer oil had spilled on the floor of transformer room as well as outside the room. There were a total of ten cables, single core LT PVC, size 630 sq. mm, one Blue Phase

(B Phase); one LT PVC cable was found detached from the transformer bushing and was lying on the floor touching the transformer radiator fin, thereby causing a slit (cut) in the radiator fin, through which hot transformer oil gushed out in the form of spray and caught fire. That fell down on the transformer room floor and when it touched the fin, it caught fire, due to short circuiting. He deposed that magnitude of the current of the 1000 KVA transformer on LT side is to the range of 1333 amperes; on HT side, current is to the tune of 53 amperes. On detailed examination of the 1000 KVA DVB transformer, in the presence of DVB officials, Fire officials, CFSL officials and DCP (South), he observed that two bushings of HT side were damaged and a third bushing was cracked. On the LT side of the transformer, the metal B Phase bus bar was partly burnt; a B- phase cable end socket had got detached from the secondary side of the transformer due to over-heating. A cable end socket was dis-connected and had a notch in the form of a 'U'. Normally, the cable end socket has a round hole, (called the "eye" of the hole, connected to the metal bus bar with the help of nuts and bolts. On further checking, a cavity was found on the hole; other cable end sockets were found loosely connected. It was seen that on the B phase, a new cable end socket appeared to have been replaced recently and cable socket was found to be fixed to the cable conductor by hammering and not by using crimping machine. The hammering on the cable socket, led to loose connection; as the transformer was on full load on 13.6.97, there was heavy sparking, causing cavity and U shaped cut in the cable socket. The Cable socket fell down, touched the radiator fin, resulting in electrical fire which was the cause of fire in the said transformer. The

other two phases were also affected by fire. The LT and PVC insulation of the cables were burnt from the transformer room to the wall of LT room (Third room). In the third room, HT panels, LT panels, battery charger and metering cubicle belonging to DVB, were housed; on examining the HT room, it was observed that there was a four panel HT board and none of these panels had any protection relay system. The 1000KVA transformer installed in the middle room did not also have any gas pressure relay (Buchholtz Relay), which is mandatory under Rule 64(2)(c) of Indian Electricity Rules, 1956 (hereafter "IER"). The over current and earth fault protection relays are also mandatory for the HT panel Board, as per rules 64(2)(a) and (b) of IER. The DVB cables were lying in a haphazard way and could not be distinguished as required under Rule 41 of IER. They were on the surface of the transformer room instead of being laid in the cable trenches as required under the provisions of the IER and IS:10028 (Para 2) of 1981. Such cables, lying on the surface were not covered with sand or with non-flammable slabs to avoid the spread of fire. The LT PVC cable socket was not crimped as required under the provisions of IS Code 1255 of 1983 read with Rule 29(2) of Rule 29 of IER. The HT oil circuit breakers ("OCB") on the HT panels were not provided with protection system, and they the OCBs, were acting like manual isolators, instead of OCBs, as they could not have tripped automatically in the case of abnormal conditions of supply. The 1000 KVA transformer also did not have sufficient clearances as required under IS 1886/1967 which had to be 1.25 meters all around the transformer in the case of an enclosed room. The witness also stated that there was no arrangement for draining out the

transformer oil in case of damage/rupture of the transformer, mandatory as per provisions of IS 1886/1967 and IS10028 of 1981 rules. The frame of the DVB transformer was not properly earthed at the time of inspection, as per Rule 67(1) and Rule 62(i) of IER. On 14.6.97, a Uphaar Cinema Official Mr. Sharma informed them that a complaint was lodged with DVB regarding the said transformer in the forenoon of 13.6.97 and DVB officials had replaced two cable end sockets on 13.6.97 on LT side of the transformer. After inspecting the cinema hall in the presence of DVB officials, he prepared his detailed report Ex. PW 24/A containing his signatures as well as that of A.K. Aggarwal, who assisted him.

3.24 In cross examination, PW-24 stated that a car had been parked one and a half metres away from the transformer room; he denied the suggestion that cable trenches existed in the transformer room. He stated about signs of beading around the radiator hole, due to melting from arching, and that some melted material was lying on the floor. He stated that the B-phase socket had been replaced, and not the Y-Phase socket; two sockets were loose and fixed by hammering, on the B-phase-the detached socket was one of them. At inspection time, all B-Phase sockets were detached; one was touching the radiator; the remaining two were hanging out on account of the fire. They showed signs of sparking; basically it was the effect of fire. There were sliding marks of the cable approximately 1-1/2 inches on the radiator fin, caused simultaneously along with the hole on the fin. The fallen LT cable lead, on the radiator fin, was an earth fault, and could be called short circuiting if two even phase

conductors are in contact with earth. The protection relays installed at the 11KV Grids at AIIMS panel had two over current, and one earth fault relay which could have tripped with the kind of fault, on the HT side of the transformer.

3.25 The witness deposed that the Upahaar Cinema fault could be transmitted to the AIIMS grid station if it reached a level beyond 300 Amp on 11 KVA side; it may take 5 minutes or one hour, for the fault to reach the grid station. That grid station serves three units, i.e Green Park, K-84, Green Park and Uphaar Complex. If other substations are switched off, the Uphaar side may take one hour to reflect a fault, in the AIIMS grid. He did not know the composition of transformer oil, but stated that the flash point is 140 degrees centigrade, when vapours will form; if they light, ignition would take place. He however, was not aware whether constant heat was required to burn the substance. A normal transformer of 1000 KVA capacity has 900 to 930 litres of oil. He could not say how much time was required for the oil to go out, after heating. However, the transformer was heated, because of the entire load, that day. He stated that the report was sent to the Dy. Commissioner of Police on 25-6-1997. Some of the deviations pointed in it were the immediate cause of fire, others led to its spreading. He said that the generator set was supplying electricity to some installations, but not to the air conditioning system; the generator set was a 75 KVA set; it was inspected by the witness. He said that some burnt cars could be seen outside the transformer shutters; but could not specify the number. Furthermore, he said that some water had been sprinkled on the floor of the transformer room and some oil too was there. He said that there were 10 cables

on the LT side of the transformer; two were joined at the B phase with hammer. Cables are attached to socket before they are joined to the bus bar; the permissible method of joining is crimping. After so joining, the socket is joined to the bus-bar with nut and bolt, which can be done with a specific sized spanner. When inspected, the socket and cable were resting on the radiator fin; every radiator has several fins. According to IS 1255, which was also affirmed in 1996, which deal with maintenance of power cables up to 33 KV rating, all conductors of X, L, P and E terminator are to be terminated by either crimping, compression or welding. In crimping, or compressed connection, the conductor and lug ferrules are pressed together with tools and dye to form a joint. The witness stated that cinema halls are inspected in a sectionalized manner. He had not inspected the transformer prior to 14-6-1997. According to his understanding, the Electricity Inspector's office was supposed to inspect only the cinema auditorium and connected electrical installations. He had seen the log sheets in the AIIMS grid; according to it, supply was normal till 5:00 PM on 13-6-1997. He said that inspection reports Ex. 24/DB, CD and DD were sent from the District Office, by Shri B.R. Meena, Asst. Electrical Inspector, to the Licensing authority. He admitted that the inspection by his office is to consist of examination of all equipment, and in case of any deficiency, notice has to be issued to the licensee for rectification of such deficiencies. Whenever DCP licensing sought for reports, the concerned Asst. Electrical Inspector inspected the building, and sent the report. In terms of Rule 63, of IER, in regard to high voltage or extra high voltage installation, energy supply cannot be started unless the Inspector, is satisfied that provisions

of Rules 65 and 67 have been complied with. On 14-6-1997, when he visited the AIIMS grid, a protection relay system was in operation. According to IER, such a protection relay ought to have been installed in the Upahaar cinema complex; it is mandatory, to avoid or disconnect electricity supply in case of abnormal conditions of supply. Timely tripping will minimize occurrence of untoward accident. The spread of fire was due to lack of protection system in DVB's transformer; if it were there, it would resulted in tripping of electricity tripping, stopping the fire. The supply lead which detached from the B-Phase bus bar remained alive, as the other end of this was connected to the live end of the OCB, which was supplied by two cables connected with the B-phase bus bar. The witness deposed that the records showed that the DVB transformer had not been inspected by the Electrical Inspector from 1984 to 1991 and 1992 to 1997. DVB is under a duty to provide a protection relay system; its absence was the main cause of the fire.

3.26 PW-24 mentioned that there was no drain to carry the spilt transformer oil from the transformer room, away from the DVB transformer. If such drain were there, the accident could have been avoided. There was no fire protection wall in front of the shutter; DVB was responsible for the transformer and transformer room.

3.27 The next witness, PW 25 Shri T.P Sharma, Scientist CBRI has deposed that on 8.8.97, he received a letter from CBI for inspection of Uphaar Cinema building and on 12.8.97, he inspected the cinema building. Thereafter, a questionnaire Ex. PW 25/D was sent by CBI by

letter Ex. PW 25/C dated 13.8.97. He then, prepared report Ex PW 25/A including the drawings of the affected area, with the signs of smoke spread and travelling of the fire. He has stated that since two months had lapsed since inspection, he could not ascertain the cause of fire due to lapse of time. Inspection was as per information collected from persons involved in the investigation and from media; he became aware that fire had started from a particular place i.e. transformer room and had inspected that spot keeping in mind those facts. In cross examination, he said that there was black soot starting from the transformer room going to the staircase area. Cars were parked in the parking area; smoke was there too. The parking level was lower than the transformer room; it was not possible that fire could start from the parking area and travel to the transformer. The second reason for the inference as to where fire started is that there were signs of its starting in the transformer room, and the ventilation position due to which it could not start from the parking area. The wind must have come that day from the grill gate towards the car parking area, and then through staircase, which created a chimney effect; it must have travelled upwards. When fire is generated high pressure is created at slightly high area, and low pressure is created, at lower height. Wind blows from higher to lower levels. Part of smoke had travelled in airconditioner ducts and he had shown it in the drawings, made at the time of inspection. He also mentioned that there was a small opening of 45 cm dia in the ducts from where the smoke travelled; it finds mention in the body of the report, though not the sketch prepared at the time.

3.28 PW 29 B S Randhawa, Assistant Engineer, Public Works Department deposed that on 2.8.97, along with Dalip Singh, he Executive Engineer inspected Uphaar Cinema along with CBI officials and prepared report Ex. PW 29/A. During spot inspection, they found various additions/alterations in basement, ground floor,first floor, mezzanine floor/balcony and loft level in the building of Uphaar Cinema. All such additions/alterations were mentioned in the report/Panchnama, dated 2.8.97. He was shown drawings of the cinema building by CBI officials as well as reports contained in the file. Drawings/sanction plan of Uphaar Cinema are in File No. 12(62)/PWDII/Uphaar Volume I(D73) marked PW 28/A. Sixteen sanction plans mark PW 29/A1 to A16 in this file were shown to him at the time of preparing the report, in which he identified the signatures of S N Dandona. The Inspection Report Proforma, dated 7.3.80 was proved as Ex. PW 29/B. He proved Inspection Report dated 22.3.78 bearing the signatures of S N Dandona as Ex. PW 29/C. He also proved the Inspection report of the Uphaar Cinema dated 30.12.77 as Ex. PW 29/D, Inspection report dated 28.3.79 as Ex. PW 29/E and he identified the signatures of S.N Dandona on all the reports but he could not identify the initials of S N Dandona. He deposed having found, on inspection, that in the balcony, the right side gangway was closed by providing extra seats; the gangway on the right side of the middle entrance gate was 1'.10" instead of 3'.8" which was restricting the passage. There were total 302 seats in the balcony. On the right side, an eight seater box covered the exit passage. The Inspection Room between stair case and projection room had been converted into an eighteen seater box. Hence, total number of seats

in the balcony including two boxes comes to 328 instead of 250 seats. The Sweeper room and adjoining toilets were converted into an office room, the operator's rest room was also converted into office cum bar room in which drink counters were found, in the corner. He deposed that between the second floor i.e. projection room floor and loft floor, a full width door on right side of the stair case landing was found; it obstructed passage to the terrace. A reception counter of Sareen Associates has also been found in the stair case leading to terrace, this too obstructed stair-case passage. He deposed that on the ground/ stilt floor, the portion above ramp for basement was constructed upon and was used as homeopathy dispensary of size 20' X 9'. This was behind the transformer room. The outer wall behind HT transformer and LT room was constructed upto the first floor height instead of three feet height. The outer side of LT room, transformer room and HT room, shown in the sanction plan were same but the positioning of the partition had been shifted resulting in alteration in internal sizes of these rooms. A room 14 X 7 feet adjoining to HT room was constructed and used as a ticket counter and a portion of ticket foyer measuring 20 feet X 20 feet was found converted into Syndicate bank. The restaurant on the front side of hall was converted into an office, of Sanjay Press. A mezzanine floor was found constructed with RS Joists (and probably timber flooring) which was completely burnt over the first floor which were said to have been used as offices. This floor height was 8' above the stilt floor level and with total covered area of 40 ft x 33 feet plus 40'x39.3"1/2- 2890Sq.Feet. Another portion with RCC slab had been constructed at mid landing of the stair case at eight feet height above the stilt floor and used

as an office. The portion of the stair case around lift well and leading to basement had been found occupied by M/s Sehgal Carpet, after converting it into an office. The total seats in the auditorium were 751 instead of approved 750 seats. He also deposed that in the loft level i.e. top floor, the big hall was converted into office cabins by providing the wooden partitions and were used by Sareen Associates, Supreme Builders, Supreme Promoters, Supreme Marketing (P) Ltd and Vicky Arain Impacts (P) Ltd., as indicated in the signboards on the wall. The stair case over the loft level had been converted into an office.

3.29 PW 35 K V Singh, Executive Engineer, CPWD deposed that under directions of Chief Engineer, he visited the DCP South's office on 18.6.97. Along with Assistant Engineer Davinder Singh and representatives of DCP South, he inspected the Uphaar Cinema and prepared detailed report Ex. PW 35/A. He gave his detailed report regarding LT Panel, possible cause of fire in Uphaar Cinema in the transformer room, air conditioner and possibility of fire and smoke through air conditioning system. There were two transformers i.e. one of 500KVA and other of 1000KVA capacity in that room. The 500KVA transformer was owned by the Uphaar Cinema and the 1000KVA transformer was installed by DVB to meet the requirement of the nearby areas. On inspection, he found the 500KVA transformer alright and 1000KVA transformer was already open, the parts of radiator were removed, some cables were also removed for investigation by other agencies. He restricted his inspection to the possible cause of fire and he was also shown photographs taken on the spot,

during the day of occurrence or next day; he observed that one of the LT cables of the 1000KVA transformer had broken away from the terminal and had fallen on the radiator which caused line to ground fault and also caused heavy flow of current which resulted in a hole in their radiator and in spillage of transformer oil to the ground. Fire occurred because of arching which had taken place due to the fallen cable. There was heavy smoke in LT and HT rooms and carbon deposits were found there. LT and HT panels did not have fuses and it appeared that tripping of power supply took place only in AIIMS grid not in the Uphar Sub-station. This showed that there were no protection system, or tripping system in Uphaar Cinema. He also observed that vehicles were parked outside the transformer room but he did not know whether any vehicle was damaged or not; fire would have aggravated because of petrol and diesel in the vehicles on the same floor and he had not noticed about the loose connection. The reason of breaking down of the cables was loose connection or over loading. The smoke travelled through the air conditioning duct. The witness saw that the air conditioning blowers were not connected through generator supply; therefore, he inferred that after the fault was cleared, air conditioning blowers were not working and the smoke did not travel through air conditioning duct, after the fire, the blower should have stopped working but it did not. The supply was restored between 4.55 and 5.05 and during that period, the blowers were on which enhanced the speed of smoke inside the cinema hall.

3.30 He mentioned about sand on the transformer room floor. There could be two reasons for the cable falling down; one loose connection and the other, over current. The latter happened when the current touched the radiator body, after its detachment. Firstly there would be an earth fault, then there would be over current. In case of over current, the over current relay would operate. The witness could not tell with accuracy the composition of transformer oil. Because of arching, oil reaches flash point. He was not aware whether any transformer oil was flashed on the walls of the DESU transformer room. He corroborated his report that fire occurred due to loose connection or over-current. The detached cable melted when it fell down. There could be two possibilities : (1) over-current and (2) loose connection. The first occurs when wire gets detached and touches the body of the transformer. He admitted that in such a case first earth fault will occur and then; over-current. According to him the sliding marks are covered by the definition of earth fault. In case of either fault the respective relays would operate. If earth fault occurs in LT side it gets reflected in HT side as over-current. Though not aware of the composition of oil he said that it is Hydro-Carbon flash and probably the flash point is more than 80 degrees. The witness stated that arching led to heating of oil which reached flash point. The other reason could be that insulation was burnt and there may be other material in the transformer room which caught fire. The time taken in arching/sparking in carrying fire depends on many factors and fire can take place immediately after detachment – it can take one second to create a hole after the detaching the wire in the body of the transformer.

3.31 In the cross-examination the witness further stated that he could not remember which cable of B phase was detached. Apparently there was no electrical fault inside the transformer. The main incoming switch to the LT Panel in the form of 1600 ampere air circuit break up. All out going switches were without proper fuses. Instead of such proper fuses wire was used contrary to rules. He admitted that thick wire were used in the fuses which were again safety measures. The purpose of affixing fuses is that if there is some trouble it would go off, stopping electricity supply. The witness said that he could not find protection for the four oil air-circuits breakers in the HT panel and LT panels, loose connection also causes over-current. This is one of the causes for fire. Over-heating must have occurred at 4.55 PM when electricity supply was resumed. If the protection relay system was present, it would have tripped the supply at 60/5 ampere. He stated that there was substation in the Ashirwad Building and electricity supply was coming from that place to Uphar.

3.32 According to the evidence of Dr. M.L. Kothari PW-36 (Supervisor in IIT), he inspected Uphar Cinema building on 27.6.1997. He verified his report Ex.36/A and stated that he had submitted it on 02.07.1997 to the DCP; the report was based on observations made on the spot during inspection and after going through the report of Mr. K.V. Singh, PW-35.

3.33 PW-36 stated that he drew his most probable inference looking at the photograph that the conductor while falling was arching. According to him over-current, over-loading due to phase fault and due to earth fault took place. On any feeder two over-current relays are provided and one earth relay is provided; this combination takes care of all phase and earth faults. Technically in case of earth fault relays should have operated. He could not say that the transformer oil caught fire because of arching or any other reason. He did not agree that fire aggravated because of lack of protection relays in the DESU transformer. But on a question about the difference beyond over-current and over-heating, he said that the over-current may be due to two reasons i.e. over-loading and fault whereas over-heating is mainly due to loose contact resulting in contact resistance. The type of fire accident could be due to over-current as well as over-heating. He agreed that according to the Electricity Rules there should be protection relays in circuit breakers of HT panel of the Transformer.

3.34 PW-39 Rajat Kanti Bhatacharya was working as an Executive Engineer, MCD, on 09.01.1997. He deposed that zonal offices sanctioned plans of 400 sq. yards beyond which they are sanctioned by the Building Head quarter. His duties were in the South Zone, they were over all supervision of the field staff including Engineering staff. The field staff were to check up the constructions to ascertain whether they were unauthorized and if so take action for their removal. The zonal office used to issue completion certificate except to the

picture halls cases upto 1997. The Building Headquarter used to give completion certificate for cinema halls and also carry out inspection at the time of grant of such certificates. He deposed having seen the notification dated 03.05.1994, issued by the Lieutenant Governor. He inspected the Uphar Cinema along with engineering staff on 24.06.1997, under direction of the Deputy Commissioner (South), Delhi Police and recorded deviations or alternations found in the cinema hall in the report Ex.39/A. That document also contains Annexure-I outlining eight points of various major internal changes Ex.PW 39/B. Ex.39/C was photocopy of sanctioned basement plan marking all the irregularities. Photocopy of stilt plan was PW 39/A on which he noted deviations in red and yellow pencils. The photocopy of 1973 sanctioned plan relating to mezzanine floor of the cinema shows alterations in red pencil with remarks in ink, the second floor plan was marked as Ex 39/C ; PW 39/D was third floor plan. Both these contain deviations and alternations in red and yellow pencil and notings in ink. The witness sent his report on 02.07.1997 to the DCP (Crimes) giving a list of eight major deviations. He also sent a letter dated 11.07.1997 giving the same list of eight deviations being Ex.PW-39/F. The witness also mentions having handed over file D-78 (seized by Memo PW 39/G). According to him the 1973 plan of Uphar Cinema would be taken as the final plan.

3.35 In the cross-examination the witness admitted that internal walls of three transformer rooms were shifted, thus showing difference what was sanctioned and what was in existence.

He admitted receiving ex.PW-39/DA dated 27.04.1995 and marking it to the Junior Engineer who reported back with the remarks that it related to the License. Therefore, it was marked to the Administrative Officer on 03.05.1995. In cross-examination he stated that basements are covered under Rule 54 of the Building Byelaws of 1959 and that if there is provision for proper ventilation violation regarding four operative walls would be compoundable. He admitted that walls were open in front but could not say whether they were causing obstruction to the egress from the building. At the time of his inspection the RS Joists were not in the form of any room but merely installed there. He could not say that the RS Joists violated any building byelaw; they were not causing any hindrance to the egress, ingress of the building, auditorium or balcony. He mentioned about the Homeopathy dispensary in the ramp and that there is sufficient space underneath the dispensary to go in or out of the basement. He also admitted that there was no door or passage to go out of the building through the dispensary. He was not aware how many exists are required in the basement of the cinema hall but said that there was exists in the shape of ramp, stairs in the north-west corner and stair case near south-end and near the generator room in the basement. The existence of office in the stair case i.e. Sehgal Carpet did not obstruct the working of the lift. He could not say whether such office obstructs the ingress and egress of the building to the ground floor. He admitted that carrying of restaurant activity and bank are both commercial activities but could not say whether it violated the building beylaws. He admitted that according to the building byelaws under sanction of permission was required for opening

such like doors as were created by convering the manager room and attached WC room into a varanda with a glazed door and loft about it. No permission according to the witness was required for putting up a false ceiling. He was not shown changes in the seating in the cinema hall but saw only the drawings of 1973. He acknowledges the procedure for issuing a completion certificate which is preceded by scrutiny report and verified, Ex. PW-17/DA the completion certificate. According to that there was no objection to items 2 to 6. According to the sanctioned plan, 2 WC, 4 urinals and 2 wash basins in the third floor were allowed but in the completion certificate it was reduced to 1 WC, 1 urinal and 1 wash basin.

3.36 PW-40 PC Bhardwaj was posted from August 1990 to October 1994. In October he was posted as Assistant Engineer Zone 1601. In October 1994 he was transferred as A.E., R.K. Puram and remained there upto 14.06.1997. The R.K. Puram station has 324 substation and 372 transformers which were under his control. He dealt with complaints concerning sub-stations and took care of preventive measures. There was a south circle which used to refer complaints to him. The district used to maintain break-down offices. He used to receive complaints calls including HT, LT Panels transformers and LT leads as preventive measures maintenance. He was supposed to examine the performance of the transformers at least once a year. Inspectors had to do this once a month in respect of transformer under their area. In 1995 there was a complaint to inspect the transformer installed at Uphar cinema hall but since the day declared as a holiday due to Maha Shivratri, there could be no inspection, in May

1996 there was inspection of the transformer and LT Board was replaced. There were two transformers (1) owned by Uphar and (2) by DVB. There were separate rooms for HT and LT panels and they were adjacent to the transformer room. The inspection dated 22.01.1997 showed that protection relays were not there and were missing since long. There was direct relay which was obsolete as it required battery. According to the inspections they were to provide protection relays to the first reaching station i.e. where the supply was made from the grid and thereafter replace such protection relays of further intermediate transformer.

3.37 In June 1997 inspectors M/s Satija, Gera, Saxena, Foreman Rawat and Senior Electrical Fitter Bir Singh, Ram Kumar, Anup Das were posted at R.K. Puram, Sector 6 station. There were 8-10 helpers. In this sub-station the complaint register and general diary registers are maintained. Complaints received from DESU were entered into complaint registers and a general diary maintained there reflected the work done. He saw the general diary registers for 14.5.1996 (Ex.40/A) comprising of 201 pages. It showed the maintenance schedule at Uphar Cinema on 22.01.1997. He identified the entry dated 13.6.1997 in the handwriting of A.K. Gera according to which two aluminum sockets 630 mm were replaced. The witness further deposed about having received four complaints on 13.6.1997 at 8.00 AM from south circle pertaining to Uphar Cinema, Beri Sarai, Raj Nagar and G Block Hauz Khas; and having reached his office at 9.15 AM he informed Mr. Satija about the complaints. He also chalked out the programme with Satija. Since the Uphaar cinema DVB transformer

also fed the residential area of Green Park, they decided to attend that complaint first.. He checked the compliance by telephone at 2.00 PM when Mr. Gera said that no complaint was pending and that the Uphar complaint had been attended too. In his evidence the witness stated that so far as the break-down and attendance to complaints were concerned, there was no allocation of duties and whosoever was available could attend them. The DVB transformer room, according to the witness was installed in an area of approximately 14 ft X 10 ft and was fed from AIIMS grid via other substations. Firstly it was being received at Green Park substation installed at K-84 substation and then to Uphaar cinema. PW-40 mentions having prepared a photocopy of the original report i.e. Ex.40/D he deposed having handed over this original report to the Police Officers.

3.38 In Cross-examination PW-40 stated having reached Green Part Grid station at 7-7.30 PM and later inspected the Uphar parking at about 10-10.30 PM. According to him when he inspected the transformer on 22.01.1997 there was no trench around the transformer, cables and leads were covered with Yamuna sand around the transformer. The transformer rooms should be locked according to the Rules but since they were inside the Uphar Cinema building, the latter had the responsibility to lock it. Protection relays were missing. The transformer room shutter was intact but the "jali" was broken. As Assistant Engineer it was his duty to send the proposal for replacement of broken relays and duty of Executive Engineer to sanction it. A.K. Gupta was the Executive Engineer and BR. Oberoi was the

Superintendent Engineer, the process was on and 50 panels were replaced. The report received mentioned about replacement of two sockets but without mentioning of which phase. The witness is not aware whether repairs were carried out in the Y phase. According to him the senior electrical fitter and inspector were competent to carry out such repairs. He further stated that crimping machine and tools were available at the station and at the time of fault these instruments were taken; they are issued to the Supervisor and Fitter. According to his knowledge repairs should have been conducted only with a crimping machine. No one had informed me about non-availability of crimping machine.

3.39 The witness stated that except one socket which had melted in U shape from the top the other sockets were intact and lead from that socket had fallen. He admitted that if there is some fault in the joining of lead with socket there would be a cut at the tail end of the socket. He could not say whether the socket along with the lead had fallen on the DESU transformer. It detached from nut and bolt side; the portion of the socket which had fallen was attached at bus bar LT side. He could not say whether the lead which has not fallen the single lead or some pieces were joined with it. He admitted to the hand-writing of B.M. Satija, Ex.PW-40/DA-1. There were two Supervisors including Mr. Satija, Mr. Gera, one foreman Mr. Rawat; and Bir Singh one of the Electrical fitters. There was no specific breakdown staff; whoever was available used to attend the complaint. The interruption of electricity supply in the Uphar transformer on 13.6.1997 can be termed as breakdown and whoever was available

could attend the complaint. On 13.6.1997 the witness was informed with the LT lead of Uphar cinema DVB transformer had been burnt. He could not comment on the colour of the fallen lead since it was burnt. The witness admitted that only one vehicle was available in the substation on the concerned day and that there was one complaint of Zone 1603 and another complaint of Zone 1601. The staff for all the four complaints went in the one vehicle. According to the letter PW 40/DX 1 B.M. Satija was deployed for maintenance of zone 1601.

3.40 PW-44 Bhagwan Din was working as Mazdoor on the relevant date. He deposed to having accompany B.M.Satija, A.K.Gera and Bir Singh to the Cinema Hall in the morning with a tool box, at their instructions. Bir Singh opened the transformer room shutter. A socket was changed with the aid of dye and hammer since the crimping machine was out of order. It was changed by all three accused Bir Singh, B.M.Sateeja and A.K.Gera. A socket was thereafter connected to the bus bar; the switch was turned on and the transformer room shutter was closed by the three accused.

3.41 In cross-examination, he mentioned that B.M.Satija was standing there and Bir Singh was working under his supervision and guidance. He further deposed that they were working in the middle phase but was unable to say that it was B-phase or Y-phase. He again said that

two sockets were replaced in the middle phase by Bir Singh after which supply was switched on. At that stage, there was no sparking in the transformer.

3.42 PW-46, Munna Lal, deposed about having attended to the complaint in the Cinema Hall in the morning when a fire incident first occurred, at the Uphaar cinema hall. On opening the shutter, he found that there was fire and insulation was burning and melting. He switched off the HT switch in the adjoining room and used sand and earth to extinguish the fire. The insulation of lead of LT side were melted. He deposed having reported that leads were burnt and they had it replaced and he also deposed that when he went there, transformer oil was not coming out but transformer room floor was wet. In his previous police statement, he had recorded that oil was leaking out of the transformer. He also deposed that the leads were from the first phase.

3.43 PW-48, S.K.Behl, Chief Engineer, DVB, deposed that Junior Engineers in their concerned areas were responsible 100% for the condition of their sub-stations. Assistant Engineers and Executive Engineers were responsible to the extent of 50% and 20%. Normally, protection relays were provided at HT panels to accord air currents or earth at 11KV panels and ensure safety of panels. Other accessories such as crimping machines etc. were provided for the purpose of repairing sockets and to ensure that loose connection existed that would result in high temperature. As far as he could recollect, no protection relays were

provided though back-up protection existed at the grid station level from where 11KV feeder supplies power upto the Cinema Hall. Thus protection was away from the grid station end. He also stated that supply must have tripped from AIIMS immediately when the fire occurred since the system was functioning smoothly at the grid level.

3.44 The DVB's 1000 KV transformer catered to the adjoining Green park locality; it also met part of the load of Uphaar complex where some connections were allowed. He deposed that a crimping machine should always be used to avoid loose connections. He identified Ex.48/A, a letter sent by him containing replies to queries. He identified other letters Exhibits 48/B, 48/C, 48/D, 48/E and 48/F. He did not remember how many crimping machines were available with the DVB at the time; he stated that if the machine was not available, dye and hammer could not be used for repairing cable leads. It was the duty of the concerned Supervisor to A.E. to arrange new crimping machine or have it repaired and ensured that the job of connecting sockets with leads is carried out properly. The Uphaar sub-station was an unattended sub-station where the relay could have been missing. He visited the site after the accident. He deposed that the transformer winding was not damaged and was lying immersed in oil. The remaining oil in the transformer was unburnt and intact. He denied the suggestion that use of dye and hammer could be similar to that of a crimping machine. He confirmed having stated previously that the duty of protection relay was of the Executive Engineer and the Assistant Engineer; they were also responsible for providing time

lag fuses in the transformer. According to him, such time lag fuses are provided in the number of stations and they serve the purpose of relay. Shri Bhardwaj was placed under suspension along with some Supervisors. He stated that melting point of steel was about 1300 degree Centigrade and that of aluminium was approximately about 600 degree Centigrade. The burning point of transformer oil was 120 degree. He acknowledged some problems in connecting a mobile transformer after the accident since the LT cables emanating from Uphaar sub-station were damaged. Supply to the Uphaar Cinema sub-station was through AIIMS to different Green Park Stations, the closest being K-44, Green Park. The 1000 KV DVB transformer was to cater the needs of the neighbouring locality but also 4 or 5 or 6 consumers in the building. He deposed that it is mandatory that the Electrical Inspector has to inspect the transformer after installation before energizes; this was not done in 1989 when a new DVB transformer was installed. There were difficulties in complying with this since the entire supply in Delhi was seen by one Inspector. The DVB transformer installed at Uphaar was a level higher than at the plain level. The lead had fallen on the bushing side of the transformer. He stated that reasons for burning of transformer would be overloading of system and at that times, no availability of adequate protection both on LT and HT, the responsibility of which lay entirely with the concerned maintenance staff. The transformer oil acts as a coolant; it also insulates between LT and HT winding of transformer. After seeing PW-21/D socket, he said that it was not crimped properly.

3.45 PW-49, the Chief Fire Officer, deposed having received a call about the cinema hall fire at 5-25 PM, reaching there at 5-45 PM and finding that some people were trapped in the balcony area. There was smoke and a lot of heat; he could not open the balcony foyer door, which was forced open by his officers. He helped rescuing 3 persons, who were not responsive or moving, as well as a girl. Though alive, bubbles were coming from her mouth. He was in the cinema hall till about 19-45 PM. He went to the spot on 14-6-97, and operated two or three hoses which were functional. The underground water tank by the side of the cinema hall was enclosed by a wire mesh, covered by crates of cold drinks. Burnt vehicles were at a distance of one meter from the transformer room. The cables in the ceiling of the parking area were damaged and burnt. The sprinklers in the basement could not be operated since there was no water. Emergency light fixtures, without light was available in the cinema hall. He identified documents, which were exhibited as Ex. 49/A to Ex. 49/E. He mentioned having inspected the cinema on 14-6-97, when someone unknown to him, operated the fire extinguishers; he did not know if that person was an employee of the Uphaar cinema. He had not seen any bolts or latches on the outer face of the balcony exit doors. There were no wooden or concrete flooring on the RS Joists in the ground floor.

3.46 PW-50 Mahabir Tyagi was working in the licensing department of the Delhi Police. He stated that the Uphaar cinema was working under stay orders of this court, and was being issued temporary permits periodically; there were 13 such cinema halls operating on the basis

of such orders. He proved the note sheet marked Ex. 30/A in respect of the Upahaar licensing for the period 1-2-1992 to 31-3-1992. He identified file D-100 relating to the period 1992-93 containing 8 note sheet pages and correspondence sheets of 41 pages, Ex. P-50/B was maintained in the licensing department's office; he adverted to an application of Sushil Ansal for renewal of annual license for the period 24-4-1992 to 23-4-1993, with an affidavit. He stated that in the affidavit, Sushil Ansal had described himself as the Chairman of the Green Park Theaters Association. He identified that application and the affidavit. He also stated that the application was received by diary No. 7685 dated 12-3-1992 in his office; he initialed on the margin of the letter, which was identified in court. He also pointed out to the endorsement of SI Balwan Singh. He identified other signatures, at point C and D, on the letter dated 3-3-1992. He identified other documents, i.e Ex. PW-50/C-1 to C-15. The witness was not cross examined on behalf of accused, though opportunity was given.

3.47 PW-52 Sumer Singh was a constable assigned to be at Uphaar Cinema hall, that day. He deposed that his duty hours were 10 AM to 12: 00 PM. He went inside the cinema hall just after the interval, to verify whether everything was in order. When in the staircase, he heard an explosion. He went down and saw oil gushing out of the transformer, which had caught fire. The fire spread fast; dark black smoke started coming out. He informed the parking contractor's employees about the fire incident. Later, he rushed to the manager and informed him of the fire. He then went to the cinema balcony through the stair case. Smoke

had entered the balcony, through the Air-conditioning. He found it difficult to breathe. All doormen ran away, on hearing about the smoke. People were desperate to get away, and were imploring for help to get out. He could help some people, from the second floor. He went up to the cinema roof top from where he rescued many persons in the second floor, with the aid of a rope. He mentions that the gatekeepers in the cinema hall fled after the fire started.

3.48 PW64 Dr. Rajinder Singh , Senior Scientific Officer, CFSL received a message from Director , CFSL at 10.00 p.m. about the fire incident in the cinema. He reached there but could not inspect it, because of insufficient light. On 14.6.97 and 15.6.97 he along with Director, CFSL Mr. Chabra inspected the spot and submitted their report to SHO Hauz Khas. A letter dated 1.8.97 was received from SP, CBI along with the questionnaire Annexure-I and articles in it, received in CFSL for examination and his opinion. The copy of that letter was proved as Ex. PW 64/A. On 27th, 28th and 31st July, 1997, 6th and 7th August, 1997 he visited the cinema, examined the articles and prepared report Ex. PW 64/B. He deposed that according to his findings, constant intense sparking between the detached phase cable and radiator initiated the fire which spread along with the oil spill. He deposed that the letter dated 5.8.97 Ex. PW 64/C was received from SP CBI along with annexures A and B for examination and opinion; after examining the documents, he prepared his report Ex. PW 64/D and submitted it. The witness mentioned briefly about report Ex.PW64/D. According to his opinion the fire had started from DVB transformer, situated in the western portion of the

car parking hall situated on the ground floor of cinema complex. The transformer room shutter opens towards the car parking lot. Thereafter, smoke appears to have traveled in northward and southward directions. The northward bound smoke encountered collapsible gate and a staircase adjacent to it. The smoke had gushed through stair-well, due to a "chimney effect," the doors next to screen on either side had severe smoke effects. The doors on the either side of screen were two plank doors, both portion showed effect of smoke, one door opposite to the staircase was closed at the time of the incident and smoke effect was observed on the staircase side of the door. Another door was to the right of the above door and one plank of the door was open at the time of fire; this way, the smoke had entered the auditorium through right door as one plank of the door was open at the time of fire incident. The Southward bound smoke traveled through aerial route towards the staircase situated to the south of the DVB transformer. The aerial route was exhibited by the fact that the concrete pillars of the building did not show any sign of smoke at the bottom portion and cable hanging overhead of Uphaar cinema complex shows signs of heat and smoke. The smoke gushed through the staircase due to chimney effect. The rear stall foyer canteen was not affected by smoke or the fire as the connecting door from the stair case had strong blisters. Therefore, the smoke had gone further up and reached the lower portion of auditorium balcony. The smoke effect had been seen on the outside, as well inside of one plank portion of door next to the stair well leading to lower portion of the balcony and the smoke had entered the balcony through the half open door. The connecting door of the foyer canteen

from the staircase was closed. Therefore, outer portion of the door had effects of smoke and heat. The smoke went up and its effect was detected on the entry door to the rear portion of the balcony. The doors from the foyer/canteen side to the Auditorium and Balcony were closed at the time of incident. Out of four doors from rear stall side, three doors of double plank were forcibly opened from the inner side of cinema hall.

3.49 In the DVB transformer, the LT side cables from the bus bar did not have clamping system or any support to the cables, the earth cable of the transformer has been found temporarily fitted with the earth strip i.e. twisting of earth cable, there was no cable trench to conceal the cable, the HT panel board did not have any relay system to trip the transformer in case of any fault, the Buchcholtz relay system was not fitted on the transformer; the temperature meter was not found fitted on the transformer. He has deposed that on inspection of Uphaar Cinema Complex, the Ground floor basement i.e. car parking lot had been affected by the fire and rest of the cinema complex was affected by smoke. No emergency light system could be detected in the auditorium and the balcony of cinema hall at the time of inspection. The physical examination of the DVB transformer revealed that cable on bus bar on LT side did not have any check nuts except one lower terminal of Phase Y and neutral, the check nut of neutral terminal was found in loose condition. The blue phase single cable at the top along with cable end socket fell down on the radiator fin due to constant sparking at the nut bolt portion on the bus bar, leading to de-coiling effect of the cable. The weight of the

cable, led to eating away of metal of cable end socket resulting in U shape cable socket end. He had also mentioned about the laboratory examination of fire extinguishers and his report Ex. PW 64/D bear his signatures. According to his observations, the insulation of cables were burnt, and the B Phase cable was hanging. Though he did not mention so in the report, according to him, the socket was loose. He stated that the cable towards left of the radiator was found detached towards blue phase. The transformer was seven feet high and about 4-5 feet in width. At the time of inspection, transformer oil was measured. He clarified that the LT side of the bus bar showed lose wires, which were unclamped. He also said that the radiator was on the left side of the transformer. He identified the cable Ex. P-2, of blue phase. Out of several cables, 3-4 were burnt; the socket rim too had been burnt. The socket rim might have come into contact with the radiator fin, leading to short circuit, which was not the cause of fire, but the arcing which might have led to it. He confirmed that there were burnt cars in the parking lot; the cause of their burning was flowing of burning transformer oil and this generated lot of smoke. The smoke was also due to burning cars and materials inside those cars. He deposed that according to him, the fire was due to short circuit, sparking and arcing.

3.50 PW-70, Additional SHO, Tilak Raj, deposed that on the day of occurrence, he saw transformer oil in the parking lot of the cinema. He had also noticed a car parked near the transformer room. He also stated that constable Virender Singh had taken accused Ajit

Chowdhury to the AIIMS on 14-6-1997 in the morning. He exhibited PW-65/X-5. The nature of injuries on Ajit Chowdhury were dangerous. He submitted that the transformer oil sent for examination were recovered from the burnt side, and from radiator fin. He said that the fire brigade pumped water on the cars which were on fire; one of those burning cars was 2-2-1/2 feet away from the transformer.

3.51 PW 76 Inspector Ranbir Singh deposed that on 10.7.97 at the instructions of ACP Jaipal Singh and Insp. R S Jakhar, Chief IO, he went to MCD Head Quarters Town Hall, met M M Dass and M L Chauhan and prepared seizure memo Ex. PW 34/A and seized the articles mentioned in it, in File D 77. Sixteen maps of M/s Green Park Theaters Associated Pvt. Ltd., Green Park PW 2/A9 to A20 which were sanctioned by Deputy Commissioner by order dated 22.3.73 were also seized vide seizure memo Ex. PW 34/A and also recorded the statements of M M Dass and M L Chauhan under Section 161 Cr P C. He thereafter handed over the documents along with the site plan and seizure memo and Case Diary to Insp. R S Jakhar.

3.52 PW-78, Inspector Rajbir Singh Jakhar deposed that on 25.6.97, the case file was handed over to him for further investigation. He, on 18.7.97, seized 22 fire extinguishers Ex. P8/1-22 from the parking area of Uphaar Cinema, cinema hall, ground floor, balcony, stair case, Projection Room and store of Uphaar Cinema through memo Ex. PW 78/A and on that

day, he also seized documents mentioned in seizure memo Ex. PW 78/B. He also seized semi-burnt vehicles from the parking of Uphaar Cinema by memo Ex. PW 78/C. He seized documents by memo Ex. PW 78/D which were produced by T S Mokha, General Manager/Administrative Officer of M/s Ansal Properties. He seized Diary Ex. P9, seized other documents, detailed in memo Ex. PW 78/F and thereafter the case was transferred to CBI. He handed over the seized articles and documents to CBI. He has deposed that during investigation, he also arrested accused B M Satija and R M Puri and recorded the statement of witnesses. He denied the suggestion that fire extinguishers were tested, in the parking area after the incident, or that a video recording was prepared by accused H.S. Panwar.

3.53 PW 79 SHO/Inspector Kumedan Khan deposed that on 13.6.97 at about 5 p.m. ,on receipt of information regarding fire incident in Uphaar Cinema, he along with his staff immediately rushed to the spot where he controlled the mob, cleared the roads, made arrangements for supply of light, water and other essential commodities and also helped in the rescue process. He deposed having gone to the hospitals and remained at the spot till 7/7.30 p.m., and that investigation was handed over to Insp. Azad Singh, Addl. SHO. On 14.6.97, further investigation was marked to him and during investigation, the FIR was got registered by Insp. Azad Singh. He arrested accused Bir Singh, Man Mohan Uniyal, seized the attendance Register of staff of Uphaar Cinema vide memo Ex. PW79/A along with 26

Duty Slips Ex. PW 79/B1 to B26 and the said articles were sent to FSL. Thereafter, on 22.6.97, the investigation was handed over to Rajbir Singh of Crime Branch.

3.54 PW 80 Insp. Data Ram had seized documents mentioned in seizure memo Ex. PW 69/A on 13.7.97 which were produced by SI Tilak Raj of Licensing Branch. PW 81 DSP Prithvi Singh of CBI, had seized documents from Inspector Balbir Singh on 27.7.97 by memo Ex. PW 74/A and on 26.7.97. He had also seized documents, described in seizure memo Ex. PW 78/B through endorsement Ex. PW 81/A and that said memo was intact at that time, second page of which was found torn, at the time of deposition, the photocopy of second page was proved as Ex. PW 81/B. He had also seized registers mark PW 78/A1, A2, C, D from Inspector Satya Pal and seized other 7/8 registers from Insp. Satya Pal Singh. On 27.7.97, he also seized documents described in seizure memo D40 (Ex. PW 86/A) from Balbir which were seized from the office of DVB. The General Diary Register w.e.f 24.4.97 Ex. PW 42/A, another General Diary register of Sub/Station R K Puram w.e.f 14.5.96 to 13.6.97 Ex. PW 40/A, No Current Complaint Register of Green Park Complaint Centre Ex. PW 43/A were handed over to R S Khatri, Chief IO. He deposed that on 2.8.97, the measurement and inspection of various parts of Uphaar Cinema complex were prepared with the assistance of Dalip Singh, Executive Engineer and B S Randhawa of PWD, the Panchnama Ex. PW 29/A was prepared and he also prepared the memo Ex. PW 29/A after the measurements were completed. He deposed having, on 29.7.97, seized files Ex. PW

29/DA and DB from Executive Engineer PWD II Division under Production cum Receipt memo Ex. PW 28/A. On 26.7.97, he seized documents as mentioned in Seizure memo Ex. PW69/A from Insp. Satya Pal Singh.

3.55 PW 83, KS Chabbra, Senior Scientific Officer, stated that he was in charge of the Chemistry Section at CFSL and that he received four parcels from the Physics Division: Parcel No.1, Parcel No.4, Parcel No.7 and Parcel No.8. He stated that the description of these parcels was given in his report, Ex PW 83/A. Parcel No. 1 contained brownish black slightly viscous liquid, said to be transformer oil, marked as Ex P.6, another bottle contained brownish black colour liquid said to be petrol-Ex. P 7. He stated that he conducted Gas Liquid Chromatography, which showed the presence of petrol and oil respectively in these samples. Parcel No. 7 contained, one polythene bag containing blackish coloured earth like substance, said to be a soil sample taken from underneath the radiator of the transformer. It also contained another polythene bag of blackish earth like substance said to be a soil sample collected from the middle point of the transformer; another bag containing blackish coloured earth like substance with concrete, collected from outside the transformer room, bag containing samples taken from outside the transformer room near the burnt car, bag containing samples taken from underneath the burnt cars and yet another soil sample taken from beneath the transformer. He stated that the results of the tests conducted on these samples were mentioned in his report. He stated that no date is mentioned in his report, but he

remembered that he received the parcels on 7.8.97, from the records that he had maintained. He also deposed that he did not know whether the Physics Division received the parcels from the Police and did not recollect whether he gave a report to the Physics Division that he was not capable of examining the materials contained in the parcel. But he affirmed that he was capable of giving his opinion by applying his instruments- such as the gas liquid chromatograph. He stated that it was incorrect to suggest that the chromatography test was presumptive; on the contrary it was accepted universally as conclusive. It was stated that he gave his opinion on the basis of the high boiling fraction detected by the chromatograph, but no opinion was given on the identity of the material. The opinion was based on a comparison of the similarities in the samples. The comparison done and similarity suggested was on the basis of the retention time detected by the instruments, since similar compounds exhibit similar and dissimilar compounds exhibit different retention time.

3.56 PW 85, Madhukar Bagde stated that he was the projector operator at Uphaar Cinema in 1997. He identified accused no. 3-7 and stated that while accused no. 6, 5, 7,1and 4 came to the Cinema daily, accused no.1 and 2 came occasionally. He stated that besides him there were three other operators, including one Mr. Mishra, Mr. Gopi Chand and another daily wage worker whose name he did not now. He stated that the projector was installed in a room above the balcony. He stated that there was a public announcement system in the operator room, which was not functioning. He deposed that he had informed Mr. Malhotra about the

dysfunctional announcement system, so that it could be rectified but no action was taken. Further, the emergency lights were working initially but later on they also went out of order. He stated that when lights used to go off, there was a system for announcement and there was an intercom, which ran on batteries. There was provision for fire extinguishers also.

3.57 He deposed that he did not know whether on 13.6.97, the fire extinguishers and announcement system were functioning or not. He stated that on that day he was on leave, and resumed duty at 5 pm. After relieving Mr. Mishra of his duty, he went to his cabin, where he was informed by the gate keeper that there was a fire in the cinema hall and that he should stop the movie. But by that time, the power supply was off and when he came out, he saw smoke in the balcony. He deposed that there was 'bhagdaad' in the balcony and he was finding it difficult to breathe due to the smoke. Some people in the balcony went to the roof and then to the bathroom, but none remained in the balcony. He went to the roof of the other building and was helping the people who were stuck in the roof of the Cinema to come out. The staff and members of the public were helping those people stuck up on the roof of the building to come out. He stated that no training was given to him or any other operator for fire fighting and that he had no knowledge whether other members of the staff were trained for fire fighting. He also stated he does not know whether the four managers and the owners were present at the time of the fire. As regards the amplifiers, he stated that the amplifiers used during songs and advertisements were the ones to be sued in case of emergency for the

public address system. He deposed that the public address system was alright, though the mike was out of order. He stated that public announcement could not have been made by anyone including himself, due to the condition of the system and the mike was not tested by anyone. He deposed that he had a direct talk with Mr. Malhotra about the fault in the PA system. Further, emergency were not controlled from the transformer room, though there were two fire extinguishers in the projector room. He also stated that there were two buckets filled with sand, hose reels on both sides of the cinema, underground water tank, exit lights and foot lights, all of which were routinely checked and inspected. Mr. Bagde also stated that apart from him there was another operator, Mr. Mishra who was senior to him, in charge of the projector room. He testified that since he was an employee of Uphaar cinema for quite some time, he knew that Gopal and Sushil Ansal were owners of the cinema, which was also confirmed by others.

3.58 PW 86 Insp. Ran Singh deposed having, on 20.7.97 assisted the main IO in the investigation of the case and during investigation, he seized documents from the office of DVB by memo Ex. PW 86/A and had also seized register Ex. PW 42/A, Ex. PW 40/A and Ex. PW 43/A also besides other documents as per seizure memo Ex. PW 86/A.

3.59 PW 87 Samir Biswas, Registrar of Companies, deposed that he handed over some documents on 1.8.97(memo Ex. PW 87/A). He had handed over copies of seventy two

documents, the same are Ex. PW 87/1 to 72. The photocopy of certificate of M/s GPT. Ltd was proved as Ex. PW 87/A1. He proved the photocopy of the Memorandum and Articles of Association, as Ex. PW 87/A2 and A3, photocopy of certificate of incorporation consequent to the change of name of company has been proved as Ex. PW 87/A4 and Articles of Association and Memorandum of Association as Ex.PW 87/A5 and A6. He proved Form No. 32 dated 17.11.88 filed by Green Park Theaters & Associated Pvt. Ltd presented by S K Ichhapuniani, Director of the company and in that Form, particulars of Sushil Ansal, Gopal Ansal, Mrs. Divya Ansal were shown as having ceased to be Directors of the company w.e.f 17.10.88 and in addition, S K Ichhapuniani and J L Dhar have been shown to be appointed as Additional Directors w.e.f 17.10.88 but that Form was not registered till date. He has deposed that it is not true that Director who has been appointed as Additional Director of the Company by virtue of Form No. 32 cannot act as Additional Director. Form No. 32 was proved as Ex. PW 87/B. Another Form No. 32 Ex. PW 87/C was filed by GPT Ltd presented by P Dharwadkar reported to be Director of the company on 23.1.95 and was filed on account of appointment of Gopal Ansal, P.P. Dharwadkar, Vijay Kumar Aggarwal, Subash Verma, Kusum Ansal w.e.f 24.12.94 as Directors of the Company. This form was also pending in office on account of some irregularities. He deposed that unregistered documents were unavailable for public inspection and that only registered documents were available for inspection. He deposed that non-registration of documents does not affect the working of the Director after filing of the said documents. He also deposed that from the perusal of records

of Registrar of Companies and Form No. 32 filed by the said company are dated 23.1.95, 22.3.95, 11.4.96, 16.6.97, 29.8.97, although, appointment of Gopal Ansal as Director w.e.f 24.12.94 has been shown but resignation of Gopal Ansal as Director of the company has not been shown in any of the Forms and as on 13.6.97, resignation of Gopal Ansal was not received in the office of Registrar of Companies. Hence, he continued as Director of company on 13.6.97.

3.60 PW 88 Surender Kumar, Deputy Chief Fire Officer had handed over the file relating to serious fire at Uphaar cinema dated 6.7.89 with FR No. 238 of Safdurjung Fire Station. The correspondence portion consisted of a letter of Deputy General Manager of Uphaar Cinema intimating about the fire and to carry out repairs to the building. That letter was proved as Ex. PW 88/B. He has deposed that at the request of Deputy General Manager, a fire report was sent to him. It was received on behalf of M/s GPTA Ltd., carbon copy of which was proved as Ex. PW 88/C. The report was also sent to the Government, (Ex. PW 88/D). He also proved the Fire Report of S K Dheri, Chief Fire Officer as Ex. PW 88/E with enclosures Ex. PW 88/E1 and E2. The seizure memo Ex. PW 88/F bears his signatures which was prepared for handing over the FIR report (D-88). He further handed over one Casual Leave Register for the period 1995 to 1996 containing 92 pages to CBI vide memo Ex. PW 88/G. As per page 50 of the Register, leave was sanctioned to H S Panwar, Divisional Officer for 22.12.96 by S K Dheri, Chief Fire Officer. The said register was proved as Ex. PW 88/H. He

deposed that at the time of handing over this register, Page 45 to 50 were there but at the time of deposition, these pages were found missing photocopy of Page No. 50 has been proved as Ex. PW 88/J which bears his signatures at Point A and B.

3.61 PW 95 T S Mokha has deposed that in the year 1997, he was working as Senior General Manager in Ansal Property and Industries. He handed over documents which were seized by CBI by memo Ex. PW 78/D; the memo contains his signatures. He has deposed that he had handed over Diary of M/s Ansal Group of Properties Ex. P9, four coloured seating plans to CBI through covering letter Ex. PW 95/A. On 27.8.97, he had handed over attested photocopies consisting of four sheets pertaining to sitting plan to the Investigating Officer and the same have been proved as Ex. PW 95/B1 to B3 and Ex. PW 29/DJ.

3.62 PW 96 Vijay Bahadur, Station Officer deposed that on 21.7.97 while he was posted as Sub Officer in Bhikaji Cama Place Fire Station, he had handed over one register Ex. PW 96/B to Inspector, Crime Branch which was seized through Ex. PW 96/A. This register was being maintained in normal course for making entries regarding fire incident or any other entry for occurrences; it contained the entry of officials who attended the occurrence and their arrival back to the office and for making entries in the said register, one Fireman has been deputed. The register Ex. PW 96/B consists of 400 pages and contains the entries for the period 6.5.97 to 11.6.97. Another register Ex. PW 96/C for period 11.6.97 to 18.7.97

consisting of 378 pages was also seized by CBI officials by memo Ex. PW 96/D, the said register contains the entry for 13.6.97 from Page 16 to Page no. 25, as per the entry Ex PW 96/E made by Ajit Singh, the information was received in their office at 17.10 hours.

3.63 PW 97 is Bharat Singh, gate keeper at Uphaar cinema. He deposed that there were around 13-14 gatekeepers in Uphaar cinema, who operated in two shifts-9 am to 5 pm and 5 pm to the end of last show. The duty list was prepared by the staff on a day to day basis and identified the document marked as Ex PW 97/A as the duty roster for 13.6.97. After going through the roster, he deposed that Manmohan Uniyal was on duty in the balcony and he was on duty in the main gate. He identified the signatures of Manmohan Uniyal on Ex PW 97/A, the duty slips and also identified the attendance register Ex PW 97/C. He also deposed that Mr. R.K. Sharma, and Mr. N.C. Chopra were managers working in the Cinema hall. He stated about the morning fire, and the decision by Mr. K.L. Malhotra, to start the show.

3.64 PW 98, Inspector MS Phartayal, CBI, deposed that he was part of the investigation team and on 28.7.97 he seized certain documents by memo Ex PW 98/A from Mr. Malhotra, Dy General Manager, Uphaar Cinema in the presence of public witness Mr. Avtar Singh. He deposed that this memo was prepared in his own handwriting and identified Mr. Malhotra's and Avtar Singh's signatures on it. The seized documents included the attendance register, first two pages of which were relating to May and June 1997, file consisting of minutes of the MDs meetings and other correspondence consisting of 40 pages. On this file, pages 1,9,12,14,

18 and 19 which were now missing were originally signed by Mr. Avtar Singh. These documents were seized from a room, which on the outside carried a display "Managers room". He stated that he had not collected any evidence as to the genuiness of the documents and simply handed them over to Mr. Khatri.

3.65 PW 100 is Ram Chander Garvan, a CBI Inspector. He deposed that on 6.6.97 he seized one general diary register (Ex PW 100/B) from the DVB office and identified his signature on the seizure memo (Ex PW 100/A). He also testified to having seized MAS register from the DESU Sub Station in RK Puram (Ex PW 100/D), a file marked LT-HT supply at Uphaar cinema from the office of the Naib Tehsildar, DVB (Ex PW 100/F), log sheet (Ex PW 24/DA) from Baljit Singh, Tech. Suptd, AIIMS Grid Station, document containing attendance details of supervisory staff (Ex PW 100/J) and two files (Ex PW 100/M and Ex PW 100/L) relating to Green Park Theatres Pvt Ltd. He also identified his signature and the relevant signatures of the other witnesses in the respective memos of seizure of these documents.

3.66 PW 108 is Mr, RS Khatri, Inspector, Delhi Police, identified the FIR (Ex PW 108/A) as deposed as to having been present while it was written. He deposed as to having been present at the scene of the crime on 27.7.97 while the sketches (Ex PW 100/B) were prepared. He also identified Ex PW 56/C, seizure memo, through which the photocopy of the

parking contract was seized from RK Sethi. He stated that during investigation PW 40 by letter dated 17.9.97 (Ex Pw 40/D) had provided him a photocopy of report of Insp.Gera, Satija and Bir Singh regarding the repairs carried out in the DVB transformer at Uphar Cinema on the morning of 13.6.97. During his investigation, the witness stated, he tried his level best to trace the original of this report but could not, although a handwriting opinion was obtained on the photocopy. After obtaining the requisite specimen signatures, he forwarded this to Director CFSL. Witness also identified several other documents, letter and memos relating to various reports prepared by the expert witnesses, the chargesheet and sanction orders against some of the accused. In cross examination, he deposed that there was no specific document regarding collective responsibility of managerial staff in the Uphaar cinema. He denied the suggestion that there was no report by an expert in writing showing that Public Address System was not working.

He admitted that there was a change of shift duty at 5 P.M. According to him, K.L. Malhotra and Uniyal were on duty till 5 P.M. on the day of occurrence. He further deposed that Uniyal had left his duty point about half an hour earlier i.e. about 4.30 P.M. according to his investigation. According to him Uniyal was looking after the duties of torchman and gate keeper. He stated that according to the investigation he did not discern any criminal liability against officials of the licensing department and that the sitting arrangement including the two boxes inside the cinema was found duly sanctioned by the licensing department. He also

conceded that the licensing authority had permitted the Uphaar to let out some portion of the top floor of the building.

4. SUMMARY OF TRIAL COURT'S FINDINGS

4.1 The trial court after considering the oral evidence and the documents placed before it, rendered its findings in the impugned judgment. The findings as far as they relate to accused (1) and (2) are as follows:

1) Several deviations, both structural and in relation to contravention of rules regarding placing of structures within the cinema building took place that were also contrary to the sanctioned plants. These were with their consent and knowledge of Sushil and Gopal Ansal.

2) The premises of Uphaar Cinema were let out to various tenants at the behest of Sushil Ansal.

3) The Cinema license was violated in regard to the sitting arrangements in the balcony as well as in regard to gangways and exits at the instance of accused Sushil and Gopal Ansal. These were also contrary to the Cinematograph Act, and rules framed under it. This endangered human life, public safety and caused the death of 59 persons and injury to 100 persons and amounted to rash and negligent acts under Section 304A and 338 of IPC.

(4) Accused Sushil and Gopal Ansal acted so negligently in the matter of installation of transformer by DVB, as to endanger human life and public safety

resulting in death of several persons and injury to others. The DVB transformer was not installed under compulsion. It was contrary to law including BIS standards, sanctioned plan and provisions of the Electricity Act.

(5) Accused Nos.1 and 2 had not given any directions to the parking contractor at the time of entering into a parking contract in the year 1988 and even thereafter, that vehicles should be parked at a distance of 16 feet from the transformer room as per sanctioned plan.

(6) Accused Sushil and Gopal Ansal were at all material relevant time at the helm of affairs of GPT (later called Ansal Club Hotel) company, they were *de facto* supervising and looking after the management of the said company.

4.2 The findings against employees of Ansal's M/s R.K. Sharma, N.S. Chopra and Ajit Chaudhary were as follows :

1) As Managers they failed to take measures to prevent fire and also failed to ensure safety measures.

2) They failed to ensure that the cars should be parked at a safe distance of 16 feet from the transformer room and no combustible material was stored in the basement.

3) Despite becoming aware of the incident, they ran away from the spot without ensuring the doors were unbolted and without ensuring the rescue of all persons within the balcony. Being Managers they were under a duty to assure themselves in

the light of the morning incident, whether the show could be exhibited that day or not and also take extra precautions vis-à-vis the transformer.

4) They ran the show on the face of violations which showed their knowledge that in case of an untoward happening, they could be liable for culpable homicide not amounting to murder. The acts of the three accused in permitting the shows without rectifying the violations, that were, structural, electrical and building deviations, with the resulting death of 59 persons made them guilty of an offence of culpable homicide not amounting to murder.

4.3 Shri Manmohan Uniyal, accused, charged for the offence under Section 304 read with Section 36 IPC was convicted as charged. The trial court held that as a gate-keeper on duty he was under an obligation to guard and see that the doors were not bolted, and patrons could get out of the cinema hall in the case of an emergency without hindrance. The evidence established that doors were bolted and one of the doors had to be broken open. This imputed knowledge that in the event of such an occurrence, death would follow. The attendance register established that accused was there when the incident took place. His action in running away without unbolting the doors, implied knowledge that such acts would inevitably cause death, it therefore amounted to culpable homicide not amounting to murder under Section 304 IPC.

4.4 The trial court held that the accused Shyam Sunder Sharma and N.D. Tiwari, Administrative Officers of MCD had so negligently issued `No Objection Certificates'

without inspecting the cinema hall or without pointing out to the deviations in the building contrary to their duties as to endanger the lives of the patrons ultimately resulting in death of 59 and injuries to 100 of them. They were held guilty as charged under Section 304 A read with Sections 337/338 and 36 IPC.

4.5 The findings against Shri H.S. Panwar were that he acted with gross negligence by recommending a `No Objection Certificate' without fulfilling the requirements of law, without carrying out the inspection of the building from the fire safety point of view, leading to issuance of temporary permits on the basis of which the cinema was screened and the resultant death of patrons in the hall on the day of the incident. This act amounted to culpable rashness as the accused being a fire officer was conscious of the intended consequences arising from his act or omission. He was held guilty of charged under Section 304 A read with Sections 337/338 and 36 IPC.

4.6 The findings against M/s B.M. Satija, A.K. Gera and Bir Singh, all employees and officials of the DVB were that:

1) They were sent to attend to the complaint in the DVB transformer at Uphaar arising from a fire incident which took place early in the morning. They repaired the transformer, improperly, in a defective manner, without a crimping machine. The improper fixing of the cable and socket of `B' Phase of the transformer with the aid of

dye and hammer instead of a crimping machine led to sparking and ultimately the fire. Being experts in regard to such matters they had knowledge that if fire took place again it would cause death of patrons in the event of a show being on. They were directly responsible for fire and death of 59 persons and were thus guilty of having committed an offence under Section 304 Part-II IPC.

2) It was held that both A.K. Gera and B.M. Satija were present at the spot when the improper repair took place in negligent manner which led to the fire.

V. Arguments of Parties

Arguments on behalf of Sushil Ansal

5.1 Mr. Ram Jethmalani, learned senior counsel for Sushil Ansal submitted that the charges framed did not spell out particulars, were imprecise about the facts and the role of various accused. The charge framed against A-15 and A-16 showed that their role was the primary cause for the accident. The charge does not disclose particulars of acts and merely mentions about issuance of "no-objection". It was contended that the reference to Section 36 IPC is based upon a wholly misconceived understanding of law. That provision contemplates that action and omission, resulting in the offence should be by the same person; omission by one person, consequent to the action of another cannot amount to a crime. A-15 and A-16 were SHO of the Delhi Fire Service. The charge in respect of A-12,

Retired Executive Engineer, PWD, A-13, A.O. South Zone, MCD and A-14, also A.O. South Zone, MCD, was that their acts and omission led to the accident. A-13 and A-14 were supposed to have issued no-objection certificates without inspection of the cinema hall. A-9, 10, 11 were Fitters of DVB. Relying upon the charge framed against A-9,10 and 11, counsel submitted that they were arraigned under Section 304 Part-II IPC which indicated a higher degree of culpability than those charged under Section 304-A. The same was the case with A-3 to A-8, who were all associated with the company. A-3, was its Director, A-4, was its Dy. General Manager, both of them died during the trial; A-5 was the Manager of the Cinema as also A-7. A-6 was Assistant Manager and A-8 was the Gatekeeper at the time of the incident. They were all charged with more serious offence under Section 304. According to the trial court, their omissions led to the fire. A-5 to A-8 were convicted under Section 304 IPC.

5.2 Counsel submitted that reading of the charges framed against A-1 and A-2 showed that according to the trial court, they—

(a) Allowed installation of a DESU transformer;

(b) Were responsible for structural deviations which led to compromise from the fire safety points of view; and

(c) Were negligent in not facilitating means of escape from the pattern.

5.3 Learned counsel contended that neither A-1 nor A-2 could be charged since they were not owners of the premises which were licensed to the company. The action of the company permitting installation of DESU transformer was neither illegal nor criminal or a negligent act or omission. The charges framed were defective because they did not indicate or mention the facts in support of the so-called changes. The absence of particulars in this charge read with the questions put to A-1 and A-2 under Section 313 show that the accused were not responsible for the accident, and had no role. Even otherwise allowing DESU in the circumstances of the case way back in 1970s to install its transformer was too remote from the *causa causans*, to constitute negligence much less criminal negligence, to invite conviction, under Section 304-A.

5.4 Counsel relied upon the decision reported as *Emperor vs. Omkar Rampratap,* 4 Bom LR 679 and *Kurban Hussain Mohem-Medali Vs. State of Maharashtra,* AIR 1965 SC 1616 to say a Court can conclude that an is accused guilty of a rash and negligent act, if his action is the immediate occasion or the *causa causans* leading to the death. It is not sufficient that the action complained against, the accused, is a mere *causa sine qua non*. Counsel submitted that the decision of the Supreme Court was illustrative of the fact that even an illegal action, so long as it is not a proximate sufficient cause of the incident leading to death, is insufficient for a court to convict the accused.

5.5 Arguing about installation of transformer and the role of the DESU, learned counsel relied upon the inter se correspondence between the company, in Ex. PW-100/M in support of the submission that the original plan was to install only one transformer owned by the company. The company's application dated 29.7.1972 was kept pending when it was answered by the DESU on 14.9.1972 for the first time asking for space to install its sub-station. The letter-dated 22.9.1972 also supported this. The letter of 21.10.1972, was relied upon to say that location of 250 k.w. transformer of the company was technically feasible; ultimately on 2.2.1972, the company agreed to housing the DESU sub-station; reliance was also placed upon internal correspondence of DESU dated 28.11.1972, 12.1.1973 and other letters dated 8.1.1973, 19.1.1973, 25.1.1973, 1.2.1973, 5.2.1973 and 2.2.1973. In the last letter, the company leased premises to DESU for a rent of Rs. 11/- annually. This letter was signed by A-1. The internal letter of 22.2.1973, by DESU's S.E. indicated that the sub-station was to feed the local market place. Learned counsel urged that the letter of 20.9.1973 shows that the Electrical Inspector had visited the site and found the company's transformer in order. Eventually, DESU's transformer was installed on 6.9.1975.

5.6 It was urged that all these correspondences show that A-1 and A-2 had no role in the installation of DESU's transformer which was done at its **express request**. Therefore, there was no occasion for charging the said accused much less holding them guilty for such action. Learned counsel relied upon provisions of Rules 29,30,31,50 and 65(7) of the Indian

Electricity Rules, 1956. He contended that the liability to maintain and ensure safety of the transformers was that of the supplier/owner, i.e DESU. The trial court held that the DESU's transformer, suffered from no less than 20 faults. The disaster, which occurred as a direct result of such shortcomings, could not have been visualized or foreseen by A-1 and A-2. DESU's transformer was under its control, under its lock and key. He relied on the evidence of the Electrical Inspector, PW-24, who stated that the DESU transformer room lock was forced open. The said witness also mentioned that the transformer of Uphaar was intact. An incident whereby fire occurred the same morning was attended to by its employees who did not take proper care; reliance was placed on the evidence of PW-24 as well as his report PW-24, ie. PW-24/A, in this regard. The said witness had mentioned about various deficiencies in the DESU transformer, such as absence of input covers, wire clamps, output covers, deficient crimping of wires leading to their loosening, touching the radiator fin, causing oil spillage and eventual fire.

5.7 It was urged that no law or rule placed in duty on the company or A-1/A-2 that they were occupiers or owners responsible for the faults of such transformers owned by third parties, like DESU, in this case. Even if such rule had existed, the logical sequitor for its violation surely could not be gross negligence of such degree, on their part, as to attract offence punishable under Section 304-A. Learned counsel listed out irregularities in the DESU's equipment and submitted that the defective cut-outs were in breach of Rule 31. The

loose unclamped wire was a direct challenge to safety of the equipment and thus contravenes Rule 65(7). Similarly, there was violation of Rule 50. All these provisions clearly pointed to statutory duties of DESU which it concededly violated. To that extent, the findings of the trial court relieved A-1 and A-2 from actions which were remote and not proximate to be called *causa causans*. If these are kept in mind and contrasted with the charge, it would be immediately apparent that each charge framed adverted to the cause of fire being defect in the transformer leading to the oil being heated in turn resulting in fire combustion and toxic gases ultimately resulting in death. The said Appellants played no part in occurrence of such accident.

5.8 Learned counsel submitted that an overall reading of the materials and evidence adduced does not support the findings of the trial court on Charge No. 1. He submitted that various letters, that were part of Ex. 100/M file, show that the entire proposal for installation of the second transformer was the brainchild of DESU. A tenancy was created for the purpose, after which DESU assumed complete control over the premises given to it. The first two appellants had no manner of control of the DESU's transformer, and could not be saddled with any form of liability, merely because the transformer was in the same building as the cinema hall. Admittedly, that transformer was for serving the market, and not the cinema, and could not even cater to the needs of the cinema, in an emergency.

5.9 It was urged that the evidence of PW-36 (and his report, Ex-36/A) an expert, fully corroborated the view of PW-35, Executive Engineer, CPWD (who had given his report Ex.35/A). Both opined about the cause of fire being sparking, leading to slit in the radiator fin, oil spillage, which in turn ignited and caught fire, due to heat. Counsel submitted that the deficiencies in the transformer were spoken about and listed, by witnesses, PW-25 and 64, as well as their reports, PW-25/A and PW-64/D. They deposed about absence of clamping system, cable trench, relay system, temperature meter, Buchcholtz Relay, temporary fitting of earth cables, absence of check nuts on Bus bar on the LT side; that all outgoing switches from LT panel were without fuses, and that all four oil circuit breakers were without any kind of protection against earth fault or over current.

5.10 All the deficiencies, it was urged, were directly attributable to DESU's omissions, in the maintenance of its transformer. The A-1 and A-2 had no role, and could not be expected, reasonably to foresee that the DESU would not maintain or keep its equipment in proper order. It was also urged that the incident which occurred in the morning of the fateful day, was also attended to by DESU officials and technicians; they reported satisfactory repairs, and went away. The cinema establishment, or A-1 and A-2 had no role in this; they could not have insisted in any course of action by DESU employees, or interfered with their work, or repair activity. Learned counsel submitted that the evidence led shows that the direct cause of the accident, or the *causa causans* was the improper maintenance, of the DESU

transformer, and its defective repair. Had DESU taken all the correct steps, and ensured that the deficiencies listed by the expert witnesses were not there, or that the vital relays were in position, to enable tripping, immediately upon the surfacing of the fault, and that the cables were crimped with a proper machine, there would have been no such accident. Conversely, neither A-1 or A-2 or anyone from the cinema establishment could do anything in regard to DESU transformer maintenance; it was beyond jurisdiction.

5.11 Counsel submitted that the trail court erred in finding the appellants guilty of "allowing" installation of the DESU transformer. This installation was at the behest of a statutory body, expected to be responsible, and indeed an expert in the field of electricity generation, transmission and distribution. A-1 and A-2, as laymen were legitimately entitled to expect that such an expert public body, would be acting lawfully, and would continue to maintain its equipments in accordance with prescribed norms. The cinema establishment could not, by any stretch of the imagination, assume that such a public body would act with negligence, that would result in an accident, and in turn imperil other people's lives. The standard of foreseeability insisted upon in law, under Section 304-A is that of one's own actions, and not the negligent actions of another.

5.12 Learned counsel relied on the deposition of PW-48. He submitted that when the earlier incident occurred in 1989 the electricity safety authorities did not bother to

conduct any inspection, while permitting installation of a new DESU transformer, of higher capacity. This lapse was not attributable to the appellants; on the other hand, it pointed to failure by other authorities, as well as DESU, which installed a transformer of a higher capacity.

5.13 Counsel, relying on Ex. PW-77/A stated that the cause of death was asphyxia. A board of All India Institute of Medical Sciences (AIIMS) was appointed to ascertain cause of asphyxia. According to the Boards' unanimous report, (Ex. 62/A) asphyxia was caused by carbon monoxide. Counsel submitted, by relying on the report that what was analyzed was only transformer oil. No other material was taken charge, or examined scientifically. In support, he relied on Ex. P-108/N and submitted that the test report for dissolved gas analysis revealed that the sample material contained 545 ppm (parts per million) carbon monoxide content. He submitted that the evidence of PW-64, about transformer oil containing hydrocarbon material was led and there was no evidence that any others material burnt resulted in carbon dioxide. It was urged that burning of any material in the parking lot not shown as contributory to cause of death.

5.14 On the question of parking in the building and the findings rendered against the appellant, counsel relied on Ex.PW 15/Y-3, which, according to him, provided for 50 Cars, (15 inside the covered area & 35 outside the covered area, but within the compound

wall). Each car is separately marked by triangles, in the parking lot. A 16' wide aisle too was provided. This was not meant for parking. The allegation is that a car was parked in this aisle, about 3-4 ft. away from entry of DVB transformer. It was found by the trial court that 18 cars were damaged; the burning oil flood – reached every portion of the parking lot, which led to further conflagration, leading to smoke which entered the building. In this regard, it was urged that the Panchnama of the site was prepared for first time on 07.07.2008, by Ex. 78/3 and it does not talk of one car being parked in open passage. Counsel submitted that all the evidence led before the court pointed to the appellant being in no way connected with parking arrangements in the building. Before 1988, the parking lot was given to a parking contractor. His contract expressly was renewed on 1.04.88. The arrangement continued till the accident. The contractor is PW-56. This shows that an independent contractor was in charge of the place. The Upahar cinema hall had no control over his business, or the cars parked. Counsel relied on the evidence of PW-56, parking contractor to say that he was not aware of number of transformers. He knew about previous fire in the morning. He went to the place about 6.00 PM. He mentioned that 8-10 cars were parked at 1.30 PM, till when he was at site. Counsel also relied on Ex-56/A the parking contract, executed in 1988, which, according to him, showed complete control of the parking space by the contractor, and no role of the appellants, in regard to the manner of functioning of that business. He urged that PW 56 had been the parking contractor since 1973; no problem was ever encountered at any stage. The use of car park or parking area

was neither unlawful nor negligent nor violative of any duty. Cars parked there could have added to the smoke. However, there was no evidence that the petrol and diesel in the cars were burnt. It was, therefore, it was submitted that nothing, which happened in the parking lot, could be attributed or was attributable to the appellants 1 and 2.

5.15 Adverting to the first charge framed against the appellant, as licensee, of causing death, by acts and omissions of allowing installation DVB transformer, counsel submitted that time of the overt act in question had to be seen in the present case. The transformer was "allowed" to be installed in 1972; actually installed and made operational in 1975. The expression "allow", used in the charge is unfounded. It was urged that the fact is DESU could have taken the property by force of law; reliance was placed on Section 42 of Electricity Supply Act, 1948, to say that DESU had power to expropriate the space for its use, to install a transformer, or wires or other apparatus, under Section 10 of the Indian Telegraph Act, 1885. The appellant did not intentionally or recklessly allow installation of a damaged or defective transformer. There was no knowledge that such location of a transformer was dangerous or would lead to fatal accident. No taint of recklessness, willfulness or negligence could be made out. The act of locating a DESU/DVB transformer, assisted a public cause i.e. supply of power to the colony. The appellant was thus entitled to assume reasonable action by DVB, to sub-serve the public good. It was argued that the charge and finding that the transformer installation was "allowed" was unjustified, because DESU's conditionalities and

circumstances leading to installation of transformer are part of the record. DESU actually demanded space, before it permitted Uphaar cinema to be commissioned and start functioning. Though an important part of the charge, accused was not questioned on this under Section 313, Cr.PC. For this reason too, the findings are unsustainable. Counsel referred to certain questions, Numbers 157, 158,204, 812, 813, 814 and submitted that they did not spell out specifically, the appellants' incriminating role. It was submitted that the finding that Installation of the second transformer violated MCD plan, is untenable. It was submitted in this regard that the area of internal spaces in the transformer room, and the partitions no doubt changed. Yet, there was no finding that such change was illegal. The appellant was not charged for that; there was also no proof of such act. The bye laws at the relevant time (Rule 2(67-A), of MCD Bye laws, read with Rule 3) permitted that partition up to two walls could be erected without sanction. The applicable bye laws were of 1958, bye-law 3. It was submitted that two documents had been relied on by the prosecution; Ex. D-76 and Ex. PW-2/A. Both nowhere indicated that any change in this respect was violative of any law or bye law. It was urged that as far as other deviations, alleged in the charge were concerned, there was no specificity. The judgment, according to counsel, did not even refer to Rules 29, 30, 64-A (2) of the Electricity Rules, which cast a duty on DESU, to maintain the transformer; relays were missing since 22.01.1997. The transformer had thus ceased to comply with Electricity Rules. There was no finding how the first two appellants were responsible, under the circumstances.

5.16 It was contended that at the time of DESU transformer installation, the Electrical Inspector had inspected the premises; he found nothing amiss; reference was made in this regard to Ex. PW-69AA. Counsel also referred to inspection by the Chief Fire Officer after two major fires in the city, in 1983. This inspection was done for three days, and though the report PW-17/B pointed at 11 deficiencies, there was nothing about wrong or illegal location of the transformer.

5.17 It was urged that the change made in building the transformer portion was within the scope of the existing, building bye laws, particularly 2(67); in any case, the so called change was mere shifting of the partition walls, which was permissible. Rule 3.7 shows that existing buildings like the Upahar, occupied in 1972, were covered by the old rules. MCD was empowered to declare existing such buildings hazardous, if they were dangerous. Nothing like that was done here. No action was ever taken under this Rule 3.7 of the Bye laws of 1983; this in turn entitled the A-1 to assume building to be in order. Referring to Ex. 17/B and 17/D it was submitted that periodic and annual inspections never highlighted that partition walls of the kind located in the premises, were not in accordance with norms; also PW-69/AA (D-93 a report of 1983) explicitly stated that they were in compliance with BIS norms. It was urged that in the absence of a prosecution case that there was spread of fire due to infringement of norms concerning partition walls, absence of relevant questions under

Section 313 Cr. PC, there could not have been any findings against the appellants, in that regard.

5.18 Counsel submitted that the finding rendered by the trial court about wooden planks being burnt, and contributing to the fire and smoke, is contrary to the materials and evidence. He referred to the evidence of PW-27 and PW-49, who went to the cinema hall, immediately after the fire, and deposed that there was no sign of burnt wood. He also relied on Ex. D-84 dated 29-8-1988 and inspection report Ex. 17/D. On the face of these documents, the trial court could not have concluded that there were wooden planks, which had been burnt. There was no recovery of any material by the investigating agency, there was no expert evidence or report, to corroborate this allegation; on other hand, the evidence on record was to the contrary. Therefore the findings of the trial court were beyond the materials, on this aspect. Counsel submitted that similarly, there was no material, rule, bye-law or expert evidence suggestive of RS Joists, which were steel beams suspended at a height of 8 feet above the ground, being contrary to law, or their having contributed to the fire, spread of fire or spread of smoke.

5.19 Mr. Jethmalani urged that the entire materials and oral evidence led before the trail court pointed to a malfunctioning electrical transformer as the cause of the fire; it was the *causa causans* that led to the death and injury of patrons in the cinema hall. All material

pointed to DVB's duty, to properly maintain the transformer, and its gross negligence in doing so. The incident in the morning of the fateful day should have warned the DVB officials about likelihood of an accident; yet the repairs carried out were shoddy. In these circumstances, the appellants could not be held blameworthy, for an action which could not be reasonably anticipated in the normal course of events. Learned counsel submitted that the law does not impose such an impossibly high degree of forseeability on a person, as to anticipate another's negligence, as in this case.

5.20 It was also contended that the transformer in question was always under the control of DVB; this was proved from the evidence of PW-24, who specifically stated that the transformer room had to be forced open, when he went to inspect it. Being neither owner, nor in control of the transformer, the appellant Sushil Ansal could not be expected, by any law rule, or regulation to forsee negligence of such agency, as the DVB. Counsel urged that the DVB as an expert body, could be reasonably expected to maintain its equipments and machinery, including the transformer, in good repair. Being a lay person, the appellant was under no duty to assume that such a specialized agency or organization would act rashly or negligently, and arrange his affairs on that assumption.

5.21 It was argued that to establish criminal negligence, the prosecution has to prove :

(1) Failure to take such care as a reasonable person is expected to take.

(2) It must be established that a reasonable person, would under the circumstances of the case would be expected to forsee the danger and its consequence.

(3) For the purpose of conviction in a criminal court, the degree of negligence is higher, than in a case of a civil liability. Simple negligence cannot be concerned by m ere description. It means that forsee-ability are such that it is a case of *res ipsa loquitor.* The matter must almost be manifest.

The consequence may be horrendous, but the Court should look at the negligence which caused the result. The ensuing consequences do not prove negligence, but create prejudicial factors. Reliance was placed on the judgments reported as *John Oni Akere –vs- The King* AIR 1943 PC 72. The test, it was urged, should be what was applied in *Kurban Hussein Mohammedali Rangwalla v. State of Maharashtra* [1965] 2 S.C.R. 622].

5.22 It was urged that everyone is obliged, depending on the duty of care assigned to him, to reasonably foresee the consequences of his actions. It was emphasized that the most proximate consequence alone has to be seen, and not those which are the result of others' intervention, or due to combination of other factors. The formulation of law in *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd ("The WagonMound")* [1961] AC 388 was relied on for this purpose. Counsel quoted a passage from the judgment, in *The Wagon Mound,* which expounds a general justification for the 'reasonable foreseeability' test:

> *"If it is asked why a man should be responsible for the natural or necessary or probable consequences of his act (or any similar description of them) the answer is that it is not because they are natural or necessary or probable, butbecause, since they have this quality, it is judged by the standard of the reasonable man that he ought to have foreseen them."*

Reliance was also placed on the decisions reported as *Doughty –vs- Turner Manufacturing Co. Ltd.* 1964 (1) All ER 98; *Bolton –vs- Stone* 1951 (1) All ER 1079 for the submission that the degree of foresight required in any given case is circumscribed by the extent of the harm which can be attributable; if the harm, or risk of injury is remote or very slight, the person cannot be held responsible. If however, the danger or risk is considerable, the person would be exposed to a charge of negligence, in the event he does not anticipate it, as the direct or proximate result of his action.

5.23 It was finally urged that an employer cannot be made liable for illegal acts of the employee. Reliance was placed on the judgments reported as *R-vs- Huggins* 1730 (2) Ld. Raym.R Vs. Allen (7) Car 183; and *R Vs. William,* Benut 1858. It was therefore contended that negligence of employees cannot visit employer with criminal liability. Counsel further submitted that there is no vicarious liability in criminal law, for the acts of an employee, and that such acts amounting to offences, by employees are only punishable if there is specific provision. Counsel referred to Section 141 of the Negotiable Instruments Act, in this context. Citing *Grant vs Sun Shipping Co Ltd.* 1948 AC 549, it was argued that a person is entitled to assume reasonable diligence in discharge of duties in respect of tasks assigned to them, and

that there is a presumption operating that everything would be done by the employee in an orderly and normal fashion, in the discharge of his duties.

Arguments on Behalf of Gopal Ansal

5.24 Mr. Sushil Kumar, learned Senior Counsel, argued on behalf of the second accused, Mr. Gopal Ansal. Casting doubts on the fairness and manner of recording the incident, the counsel submitted that initially when the incident was recorded, no person's name was shown as accused. The evidence laid before the Trial Court showed that at least two eyewitnesses, including a police constable (PW-52), knew about the incident. It was submitted that the biased reporting of the incident is evident from the fact that the complaint, though ostensibly written by the PW-63, was recorded in the typical language used by the police. Although no fire broke out in the hall, the F.I.R. said so. It was submitted that the prosecution did not show how the F.I.R. even reached the Court. Developing the theme, the learned counsel submitted that investigation into the incident occurred in three stages, between 13.06.1997 and 22.06.1997, the area police, i.e. the Hauz Khas police were the incharge; on 22.06.1997, the Crime Branch took over and started investigating the incident. Even at that stage, the Accused nos. 1 and 2 were not implicated. The investigation was handed over to the CBI on 26.07.1997. At the stage of filing of the chargesheet, accused nos. 1 and 2 were roped in.

5.25 The counsel contends that no evidence was collected against the appellant in the chargesheet. Urging that the entire investigation was tainted and biased against the accused, learned counsel submitted that according to the inspection report dated 14.06.1997, three persons were clearly culpable. One, i.e. PW-40, whose omission in ensuring installation of protection relay led to the ghastly incident, was not even named in the F.I.R. or chargesheet. The learned counsel next contended that the charge framed regarding violation of provisions of the Cinematgraph Act were vague. No specific Act, Rule or regulation in support of allegation of deviations was also mentioned. The place and manner of acts that constituted offences too and had to be mandatorily revealed when charges were framed. By way of illustration, learned counsel relied upon specific notices, such as one dated 03.03.1976, in Volume 69/AA, alleging violation of Section 14 of the Cinematograph Act. Such Show Cause Notice were replied to from time to time, as for instance, in the letter (Ex.102/D-1). This communication as well as other communications produced by the prosecution revealed a pattern adopted by the authorities for the manner of notifying violation of norms enacted under the Cinematograph Act. Once each such specific violation was attended to, the matter was deemed closed and the appellants were within their rights to assume that the authorities were satisfied that no violation of any norms or standards subsisted.

5.26 Learned counsel submitted that the charges framed being vague and not even spelling out the necessary factual ingredients in terms of time, place and occurrence, were clearly

contrary to Section 212 of the Cr.PC. Being Directors of the licensee, i.e. G.P.T. Limited, the first and second accused had limited responsibilities. Beyond attending meetings and participating in the decisions which were borne out by the record, Mr. Gopal Ansal could not be accused of any culpability or rash behavior so as to attract a criminal charge. Learned counsel relied upon the decision reported in *Ambalal. D. Bhatt Vs. State of Gujarat*, 1972 (3) SCC 525 and submitted that to attract the charge of causing death by criminal negligence under Section 304 A, it must be proved beyond reasonable doubt that the accused was responsible for such act or that the actions and omissions of the accused were the direct and efficient cause of the death. The mere fact that accused nos. 1 and 2 were Directors for certain periods of time could not have led to the conclusion of their being culpable. At the time, when the incident occurred, the accused were not Directors; the prosecution was unable to establish any connection between them and the company.

5.27 It was then submitted that Mr. Gopal Ansal was neither licensee nor the owner of the theatre. He could thus not even have been fixed with any responsibility under the Cinematograph Act. The owner of the premises and the licensee was G.P.T. Limited. Under the circumstances, charging Mr. Gopal Ansal with the offences under Section 14, Cinematograph Act, holding him guilty for that offence and also under Section 304 A IPC were untenable in law. It was contended that all evidence on the record pointed out, on the contrary, to Mr. Gopal Ansal not being the owner or licensee. His association with the

company ceased in 1995. The circumstances mentioned by the Trial Court, holding him responsible for the offence under Section 304 A were insufficient to prove negligence, let alone criminal negligence.

5.28 It was submitted that as far as installation of transformer was concerned, the argument on behalf of the appellant, Mr. Sushil Ansal were applicable even to Mr. Gopal Ansal. The DESU being possessed of monopoly statutory power virtually arm-twisted the company into installing the DVB transformer. Being helpless in that regard, the Uphaar Cinema merely complied with the demand and gave the premises, to the DVB. Once the premises were taken over by the DVB, Uphaar Cinema could not be held responsible for acts of DESU/DVB, which was also a specialized body in regard to power supply and transmission. In the circumstances, Mr. Gopal Ansal was entitled to assume at all relevant times that the DESU transformer would be maintained in accordance with law and be kept in reasonable repair, not even imperiling the life or security of anyone.

5.29 It was submitted that the finding of the Trial Court regarding collusion between the accused and officials of the statutory authorities, particularly, the licensing and fire authorities were in the absence of any charge. Here it was emphasized that to justify such a finding, the Court should have framed a charge under Section 34, which under the circumstances was not possible. It was also urged that similarly, any charge under Section 35

was ruled out because that provision presupposes criminal intent. The counsel contended that Section 304 A IPC precludes any information or knowledge by the accused; in the circumstances, the imputation by Trial Court about "connivance" is contrary to the record and rendered without charge. It was also submitted that such finding was conjectural and it colored the entire judgment. Besides, the Trial Court never cared to put such material as a circumstance appearing against the accused under Section 313 Cr.PC. The evidence before the Trial Court with regard to the licensing authority, on the basis of regular inspections, issuing of approval and NOCs year-after-year, was brushed aside on this unsubstantiated finding of connivance. Such findings have to be entirely excluded. In such event, the findings of the Court would be insignificant and highly inadequate to fasten any manner of culpability on the accused.

5.30 Learned counsel relied upon the decision of the Supreme Court in *Ambalal. D. Bhatt*; *State of Punjab Vs. Amrit Lal Jain 2006 (RCR Crl.339);* and *Prabhakaran Vs. State of Kerala 2007 (8) SCALE 605,* to say that some linkage between the cause of death and the action of the accused is not sufficient to support conviction under Section 304 A IPC. In all these cases, the Court approved the formulation of the Privy Counsil in *Emperor Vs. Omkar Ram Pratap* that the act causing death must be *causa causans*. It is not sufficient that such act may have been the *cause sine qua non*. The counsel stressed that awareness of the consequences of one's actions must be of a very high order to fasten criminal liability for negligence. It is

essential that the act of the accused, to attract conviction should be such that in all probability death would be the result. If one kept these essential ingredients in perspective, it was apparent that the first two accused were removed in distance, place and time from the occurrence. Sans any mental element of conspiracy of or malicious intent, their involvement was at the highest remote and depending upon having applied for certain clearances. Therefore, permitting DVB to install a transformer; signing a parking contract in 1988; and attending to some letters, routinely addressed when they were directors, were highly insufficient to even suggest negligence or rash behavior.

5.31 Learned counsel attacked the Trial Court findings, holding that Mr. Gopal Ansal along with Mr. Sushil Ansal were the real owners and submitted that under law, others Mr. K.L. Malhotra and Mr. R.M. Puri had been nominated. These were clearly established on the record. The counsel relied upon Ex.69/D dated 16.12.1996 and letter dated 06.03.1997 by the DCP (Licensing) [Ex.69/AA]. He also relied upon Ex.103/XX3, the minutes of meeting dated 02.09.1995, which delegated all action in respect of Uphaar Cinema, to Mr. R.M. Puri. He was also authorized by an earlier resolution (Ex. PW-103/XX1-1) to exercise disciplinary action over staff, including suspending/dismissing personnel. In these circumstances, it was contended that the scope of Rule 10 of the Cinematograph Rules could not be extended to include all those who are not nominated as licensees. Learned Counsel relied upon the judgment reported as *Tola Ram Vs. State of Bombay 1954 Crl. LJ 1335* and *Standard*

Chartered Bank Vs. Directorate of Enforcement 2005 (4) SCC 530 to submit that the language of a penal enactment should not be stretched or extended but must be strictly interpreted.

5.32 Learned counsel submitted next that the most direct or efficient causes held by the Trial Court were of such character as to be beyond accused's control. The failure of the Public Address System and inadequacies in the balcony immediately after the fire spread leading to the smoke could nowhere be attributable to the accused. Having nominated a Director to be incharge of the affairs of the company, who, in turn, nominated a General Manager to head the day-to-day functioning of the cinema hall, attributing responsibility of the accused, Mr. Gopal Ansal or Mr. Sushil Ansal for the state of fire extinguishers, non-functioning of the Public Address System, closure of one or the other exits or gates, was unjustified on the facts. Being reasonably responsible persons, Accused nos. 1 and 2, with reasonable foresight, could not have visualized that after they severed their links with the company, on a particular day, i.e. on 13.06.1997, the nominee of G.P.T. would act in a negligent manner or that the Manager incharge of the day-to-day affairs would not take adequate care. Similarly, they could not be attributed with foresight that on such particular day, the gate keeper or the torch men would bolt the door and neglect to be on duty at the crucial moment. To proceed and hold that such omissions (never visualized and incapable of reasonable visualization), amounted to criminal negligence, was unjustified in law.

5.33 Learned counsel took serious objection to the manner in which documents were sought to be exhibited and relied upon. He submitted that by the order of the Trial Court dated 23.12.2004, several unexhibited documents were permitted to be exhibited. That was questions in revision proceedings. This Court granted liberty to the revisionist to raise the objection as to the admissibility and relevance at the stage of final arguments. It was held that the Court blindly accepted these documents. Elaborating on the theme, the counsel submitted that the CBI sought to evolve two methods of proving documents. One method was to get specific letters, communications or documents in official files seized during investigation exhibited through witnesses. The other method was to have the entire files and such parts of files, which were not specifically exhibited, marked as exhibits. The latter, it was submitted, prejudiced the accused, as they did not amount to proving the contents of the documents that were part of the file. In these circumstances, all documentary evidence taken into consideration by the Trial Court pursuant to its order-dated 23.12.2004 were to be excluded.

5.34 Learned counsel also took exception to the documents recovered under seizure memo (Ex.98/A). That seizure memo described a file said to have been recovered from the Ansal's office. It was exhibited as Ex.98/C. The counsel submitted that these were a bunch of typewritten documents allegedly recovered by the CBI well after the investigation was underway. They were used as incriminating circumstances pointing at Mr. Gopal Ansal's

active involvement with the company. The CBI made no attempt to prove the signatures of the person allegedly signing them, i.e. accused Mr. A.K. Choudhary, nor proving the contents of those documents. The Trial Court in complete ignorance of this aspect took those inadmissible documents into consideration and to the grave prejudice to the accused used them against him. The findings to the extent it involved Mr. Gopal Ansal's involvement, based on such documents are unsupportable in law. In this context, the learned counsel relied upon the minutes of meeting dated 30.09.1991 of the company to say that for being a Director, there was no need to hold qualification shares. He also relied upon the minutes of the meeting dated 30.06.1995 of the Board of Directors regarding resignation of Mr. Gopal Ansal and the evidence of PW-87, the Registrar of Societies, who acknowledged that Form No. 32 was on record, though unregistered. In these circumstances, the prosecution ought to have shown how the Ex.PW-90/X-1-X-6, which purported to record Mr. Gopal Ansal as MD, had been written or recorded, unlike the minutes of Board of Directors' meetings, maintained in the registered office of the company and recovered and proved as such by PW-103. They were proved as proper minute books, maintained in accordance with law.

5.35 Learned counsel submitted that the Trial Court findings were vitiated by the judge being influenced by personal inspection of the site. It was submitted that when such inspection was to be made, several accused moved applications for participation in the process. All these applications were dismissed by orders on 18.08.2006. The Judge was

initially accompanied by the Prosecutor and the I.O. Her later inspection of the site and the utilization of notes to support findings completely vitiated the trial amounting to an unfair procedure. Learned counsel relied upon the decisions reported as *Pritam Singh Vs. State of Punjab AIR 1956 SC 415;* and *Haji Laldin Vs. State of J&K 1997 Crl. LJ 538.* Learned counsel submitted that these decisions established that an improper method of inspection excluding participation of necessary parties and access to notes recorded by the Judge would result in a procedure whereby the Judge assumes the role of a witness which is highly exceptionable. In such circumstances, personal observations of the Trial Court could not take the place of evidence; the view of the Court cannot seep into the judgment and color the findings as has happened in the present case. It was submitted that these observations were also not put to the accused under Section 313.

5.36 Learned counsel submitted that in a criminal trial based on circumstantial evidence, all material should unerringly point to the guilt of the accused and exclude any reasonable possibility of his innocence. In such cases, it is vital that the Court be convinced that the role of the accused in the rash or negligent act was of such a high order that he could have reasonably foreseen the danger or consequences. There cannot be any application of *maxims* such as *res ipsa loquitor.* Reliance was placed on *Syed Akbar Vs. State of Karnataka 1980 (1) SCC 30.* The counsel also relied upon the judgment reported as *Jacob Mathew Vs. State of Kerala 2005 (6) SCC 1* to say that for a valid finding of criminal negligence justifying

conviction under Section 304 A, there should be present a clear duty of care and such gross failure or breach of such duty of care should be established; the breach should at the same time contravene prescribed norms. The counsel emphasized that neither of these had been pointed to in this case, much less established beyond reasonable doubt. The prosecution could not show how the improper crimping of transformer, leading to spillage in the transformer, its catching fire resulting in the smoke and its spread into the balcony could be foreseen at all by the accused. Those causes were precisely the most efficient causes of death. The accused had no control over them. The Trial Court, therefore, fell into grave error in convicting the appellants.

5.37 Learned counsel submitted that all the inspections conducted over a period of 25 odd years, approvals granted for the changes within the balcony, closure of exits and placement of seats were within the knowledge of every statutory authority. The material placed on record by the prosecution established that each such deficiency was noted, commented upon and weighed by the experts, i.e. such statutory authorities. These authorities were the Fire Department, the MCD, the electrical inspector and the Licensing Department. As and when any deficiency was pointed out, the cinema management took care to cure it. The authorities nominated by law were satisfied about the compliance. In these circumstances, the accused were well entitled to place reliance on Section 79 IPC. The counsel submitted that each of these actions, held to be illegal structural deviations and illegal deviations in the balcony

endangering lives and ultimately causing death, by the Trial Court, were examined and approved in the normal course of business by the authorities competent to do so. The appellant accused acted in good faith on their certificates and approvals. In these circumstances, the Trial Court had to give them the benefit of Section 79 and acquit them. Reliance was placed on decision reported as *Raj Kapoor v. Laxman* (1980) 2 SCC 175.

5.38 It was submitted that Trial Court committed an error in no putting specific question and drawing the attention of the accused to what were actually incriminating circumstances. It instead adopted an unfair method of lumping the entire documents and putting them as queries to accused, placing them at a distinct disadvantage. Similarly, the counsel attacked the Trial Court for putting certain questions to the accused as a mindless exercise since Accused no. 2 had no role to play in regard to these circumstances which could not be termed incriminating. He placed reliance on the decision reported as *Sharad Birdichand Sharda (supra).*

5.39 The counsel submitted lastly that the Court should not be weighed or bogged down by the magnitude of the consequences of the accident, i.e. the number of deaths or the nature of injuries suffered by several persons. The Court, it was submitted, has to weigh each piece of evidence in an objective manner in accordance with law and never waver from the mandate that to hold such accused guilty, the prosecution must establish its case beyond reasonable

doubt. It was submitted that though the tragedy and the loss of life was horrific, yet it should not result in travesty of justice which would inevitably happen if the Court proceeds to convict the accused on the basis of mere moral conviction unsupported by the standard of proof which they are entitled to under the Constitution and laws of the land.

N.S. Chopra and R.K. Sharma: Criminal Appeal Nos.45 & 46/2007

5.40 It was contended on behalf of appellants N.S. Chopra and R.K. Sharma that though they were charged under Section 304 IPC; precise acts constituting criminal offences were not spelt out. It was submitted that the Trial Court's vague findings about the general duty of the Managers to ensure proper functioning of equipment in the Cinema and also oversee that the safety precautions are taken by other employees, and the failure to do so is insufficient to conclude that they were guilty of the charge. In this regard it was contended that there was no violent action or overt act by the accused which only could attract liability under Section 304. On the other hand, the concept of vicarious liability is inapplicable in criminal law. It was submitted that the golden thread which run through administration of justice for criminal cases is that where two views are possible on the evidence adduced, the one pointing through the innocence of accused has to be adopted. Reliance was placed upon the decision reported on *Kali Ram* v. *State of Himachal Pradesh,*(AIR 1973 SC 2773.

5.41 It was submitted that in this case the cinema was run on the basis of valid licenses; inspections were carried out almost annually by the statutory authorities. Yet the prosecution

choose to charge seven out of the 16 accused sent for trial for offence under Section 304 which was serious in comparison with what was alleged against the others. The prosecution made no attempt to distinguish between the role of Managers such as N.S. Chopra and R.K. Sharma and the first two accused who were charged with rash and criminal negligent act punishable under Section 304-A. The Trial Court on the same set of facts rendered two different findings, which are unsustainable in law.

5.42 Learned counsel submitted that apart from 16 accused, there were 33 others indicted by the CBI. However, when the chargesheet was filed, the others were actually dropped. Counsel submitted that the role of several persons such as those witnesses who deposed in the trial and others not even listed as witnesses were dubious to say the least. He submitted that PW-39 and PW-40 should have been arrayed as accused by the yard stick adopted by the CBI. Yet in spite of their clearly discernable role, they were not even named as accused. Others too should have been named. The Court, however, did not take much heed of these discrepancies. Had the CBI been compelled to array the all accused and produce all the eye witnesses, listed in the chargesheet, the Appellants would have been acquitted. The Trial Court's omission to direct the CBI to produce such witnesses resulted in unfair proceedings, and a wrong conviction.

5.43 It was contended that all evidence led before the Trial Court pointed to the fire having emanated from the transformer room where two sockets of the 'B' phase were replaced with the aid of hammer in the absence of the crimping machine. The Trial Court relied mainly on expert evidence to render its finding including the guilt of the appellants. There was no eye witness about the cause of fire. If one were to keep these facts and findings in mind, the conclusions drawn by the Trial Court that the appellants were absent and did not caution the patrons or aid their escape, is unfounded. Such charge and the findings exceeded the chargesheet.

5.44 It was submitted that there was no charge against the appellants regarding their being in management of the Cinema. There in fact could not have been any such charge since they were not nominated under the Cinematograph Act; they were also not licensees, owners or occupiers. Yet the trial Court rendered a finding in that regard which is without basis in law. It was submitted that the evidence of PW-44 clearly showed that the transformer was in the custody of the DVB. PW-24 an expert who inspected the site also stated that the transformer room had to be forced open when he went there. Some witnesses also stated that the main cause for the fire was lack of protection relays. The chargesheet mentioned that the fire broke out due to the DVB's fault. In the circumstances, without being satisfied beyond reasonable doubt about the responsibility of the appellants and their breach which they knew

would have resulted in death, in all probability of the patrons, the Trial Court could not have convicted them under Section 304 IPC.

5.45 Counsel submitted that the origin and cause of fire was spoken to by expert witnesses, particularly PW-64. PW-24 also had indicated that the DVB transformer was never inspected for a long time. These lacunae were of a grave and serious nature because the DVB transformer, due to lack of proper maintenance and negligent repairs caught fire. The Managers such as the appellants N.S. Chopra and R.K. Sharma could not be reasonably expected to anticipate such an event; certainly they could not be expected reasonably to know that if such an event happened, it would result inevitably in the death of those seated in the balcony. Learned counsel emphasized this by relying upon Ex.PW48/E that the lack of protection relays was a fact known to the DVB. Yet after the incident only two officers who were part of the inspection team were suspended. All the officers who had participated in the inspection knew about the seriousness of consequences if there were no protection relay. Yet there was no protection relay. The prosecution chose deliberately to over look their role and instead targeted those like Managers in the Cinema who had absolutely no control over the DVB actions much less anticipate the result of its omissions.

5.46 Learned counsel submitted that the entire investigation was flawed because the evidence of PW-56 clearly showed that instead of 15 cars which could be parked in the

building, there were 28 cars. One of them was parked near the transformer room. Yet the parking contractor PW-56 was not even on the spot when the incident occurred. The prosecution deliberately chose to ignore his role which was far graver than that of the appellants. It was submitted that the prosecution was unable to establish the presence of both N.S. Chopra and R.K. Sharma or either of them. Learned counsel relied upon the evidence Ex-PW-108/DB-1 to say that N.S. Chopra had not joined the duty at the time on 13.6.97. He was on duty the previous day. Others such as Atul Axena and D.D Sharma were present in the Cinema building concededly at the time when the accident occurred. According to the records, both such persons were present on duty from 9:50 AM; yet the prosecution did not explain how they were left out from allegations of having not helped the patrons. It was submitted that the N.S. Chopra had to replace Mr. Malhotra but had not come there. During the cross examination of the prosecution witnesses, attendance records was falsely denied. It was further submitted that none of the eye witness who deposed in the proceedings knew any of the managerial staff. Reliance was placed upon the evidence of PW-1, PW-3, PW-7, PW-8 and PW-11. He also relied upon the evidence of PW-85, the Cinema Operator who disclaimed the knowledge about the presence of four Managers at the time when the fire took place.

5.47 Learned counsel relied upon the decision reported as *Dhananjaya Kumar Singh* v. *State of Rajasthan* (2006 CLJ 3873); *State of Uttar Pradesh v. Dater Singh,* 1991 (3) Crimes

420 and *Jamuna Choudhary* v. *State of Bihar,* AIR (1974) SC 1822 to say that investigating officers and prosecutors cannot merely boost up the prosecution case to enable the Court to record the conviction. Similarly the reliance was placed upon the decisions reported as *K.V. Siva Reddy v. State of Karnataka* (2005 CLJ 3000) and *Gayatri Bais v. State of Madhya Pradesh* (1999 CLJ 812) where it was held that prosecutors are under a duty to safeguard interests of the public which includes the accused. If any material evidence which exonerates and helps the accuseds' case is within the knowledge of the prosecution or the Public Prosecutor, they are under a duty to disclose it and not withheld it from the Court as to do so would taint the trial itself. It was submitted that withholding vital material including depositions of several witnesses on the one hand and not arraying those involved in the crime as accused, both vitiated the trial and the findings of the Court below.

5.48 It was submitted that having regard to the evidence on record, the Trial Court could not have convicted the appellants at all since there was no proof about their presence at the time of the offence, the duties as Managers, breach of their duties, their duties towards patrons and its breach, either through oral or documentary evidence. Keeping these in mind, the Court also should have taken into consideration that the Cinema license was in the name of a company which had, by several resolutions nominated others, namely, Shri R.M. Puri, to perform its acts. The reliance was placed upon the resolution dated 2.9.1989 and 2.9.1995 whereby he became a full time Director. It was contended that the said R.M. Puri nominated

K.L. Malhotra by a letter dated 16.12.1996 which was accepted on 6.3.1997 by DCP (Licensing). In these circumstances, the nominations being made in favour of specified persons, excluded any role or liability of the appellants.

5.49 Relying upon the decisions reported as *Ujagar Singh* v. *State* (Vol. LXXI (1969) PCR 1009); *Shamsher Khan* v. *State of NCT of Delhi* (2001 CLJ 119) and *Prabhakaran* v. *State of Kerala* (2007 (8) SCALE 605), it was submitted that the act or omission complained of for any valid conviction under Section 304 IPC should be known to the accused to most likely result in the death. It was contended that in order that the case may fall under Section 304 Part-II IPC the prosecution should show that the act was done by the offender with the knowledge that it was likely to cause death or such bodily injury resulting in death. The knowledge of the act on the part of the offender should be of such kind that awareness should partake inevitability of the consequences. If such knowledge and awareness of the consequences cannot be reasonably established, no conviction can be returned.

5.50 Learned counsel submitted that the approach of the Trial Court in not putting specific questions to the appellants under Section 313 IPC also resulted in miscarriage of justice as they were unaware as to what were the contents of the documents put to them during the questioning. Counsel submitted that the Court did not put questions as to whether they were present at the occurrence, whether they fled from the spot, nor about compliance with rules or

their responsibility in relation to such rules and their violation. Learned counsel lastly submitted that the reference to Section 36 in the present case was inapposite. He particularly relied upon its illustration to say that provision apply only in relation to the acts or omissions and combinations of acts and omissions done by the same person. However, the Trial Court erroneously applied it in this case to tie up the omissions of one set of appellants with omissions or actions of another set of appellants/accused, which was clearly beyond the purview of law. It also exceeded its jurisdiction in rendering findings by recording connivance of officers working in the statutory agencies, with employees of Ansals and its Directors.

Manmohan Uniyal

5.51 Mr. Ramesh Gupta, counsel for appellant Manmohan Uniyal (convicted under Section 304 Part-II IPC) submitted that the findings of the Trial Court were contrary to the evidence. It was urged that the CBI did not place on record any documentary or oral evidence establishing the role and duties of a gatekeeper in a cinema hall, nor did it show what were the duties of a gatekeeper in the Uphaar Cinema Hall. Uniyal's charge was his absence from duty. Section 36 IPC was sought to be pressed into service, to implicate him. Yet, that provision could not apply since it was concerned with acts, series of acts or series of omissions or combination of acts and omissions of one individual. Uniyal could thus not be culpable for acts of others. His charge was a misjoinder, that vitiated the trial entirely.

5.52 Counsel contended that the trial Court's finding that Uniyal abandoned his post and was willfully absent was unsupported by evidence, and entirely conjectural. It was submitted that the CBI was unclear about the role and duties of gateman and torchman. Uniyal, as gateman, was not proved to be under a duty to stay on in the cinema hall during the entire show. The CBI did not even attempt to identify Uniyal as the gateman, with a further proof of his obligation to stay at the balcony during the entire show, and his having abandoned the place of duty. The Court did not find when the balcony became unmanned. It did not choose to enquire as to who were the others inside the balcony. It was next contended that the CBI had named two witnesses, Pitamber and Raminder. The former was Uniyal's reliever. Yet during the trial, both witnesses were withheld. This vitiated the trial, and the Court, in not drawing any adverse inference in that regard, committed a grave error of law.

5.53 Counsel attacked the Trial Court's finding about Uniyal's role in the bolting of balcony doors, resulting in obstruction and free passage of patrons. It was urged that none of the eye witnesses, i.e. PW-1, PW-2 or PW-3 could say whether balcony doors were locked or bolted. PW-7 was in fact able to go out, and PW-8 deposed being able to open the door. PW-8 also deposed that during the interval, when he went out, the gatekeeper was there. Even PW-11 Hans Raj deposed that patrons could open doors and leave the balcony. All these pointed to easy access, presence of a gatekeeper during the interval and no obstruction in the balcony exit.

5.54 It was contended that PW-85 deposed that there was a change of duty at 5:00 PM. He was not examined to say that Uniyal's duty continued, and he was supposed to be in the balcony at 5:00 PM. Even PW-108 mentioned this in his evidence. He, however, neither proved any list nor produced any document, obligating Uniyal's presence after 4:40 PM, when he left. It was urged by counsel that the witnesses who deposed, mentioned about no help. However, not all patrons who went out unharmed, were examined. Neither the prosecution, nor the Court could rule out the possibility of some employees helping the victims. Just as in the case of non-examination of two material witnesses, the absence of any effort to discover who were present, and at what time, and have them identified, resulted in serious prejudice to the appellant. To conclude that the appellant was guilty of an offence under Section 304 Part-II, the Court had to be convinced that the prosecution had proved, beyond any shade of doubt, that the accused had indulged in an act or illegal omission which he knew with reasonable certainty, would result in death. Such proof was lacking; Uniyal's conviction, therefore, was unsustainable in law.

5.55 It was argued that the causa causans of the accident and deaths, as well as the most proximate and efficient cause of death, was clearly the negligent and faulty repairs to the DVB transformer. Uniyal had no role to play in that. Nor did he have any role to play in the placement of the family boxes and installation of many additional seats. According to the

DCR first schedule norms, the cinema operator had control of the public address system. Uniyal was not the operator; nor was he licensee of the Cinema. In these circumstances, the trial court should not have attributed constructive knowledge of several deficiencies and shortcomings in the cinema hall, and convicted him under Section 304, Part-II.

5.56 Counsel lastly urged that in cases like the present one, where the prosecution entirely relies on circumstantial evidence to implicate the accused, the Court should be satisfied that all the circumstances from which the conclusion of guilt is to be drawn are fully established and all the facts so established should be consistent only with the hypothesis of guilty of an accused. This would exclude every hypothesis but the one proposed to be proved. The chain of evidence should be so far complete, therefore, as not to leave any reasonable ground in a conclusion consistent with the innocence of the accused. Reliance was placed upon the decision of the Hon'ble Supreme Court reported as *Hanumant Govind Nargundkar* v. *State of Madhya Pradesh* (AIR (1952) SC 343) in this regard. It was submitted that such standard of proof was not applied and the prosecution was unable to disclose a chain of evidence that excluded any reasonable hypothesis of the accused Uniyal's innocence.

Crl.A.No.21/2008 B.M. Satija

5.57 Mr. Pawan Narang, learned counsel, submitted that the charge against appellant Satija, Inspector DVB at the time, was of his "causing death" in "not properly repairing" the DVB transformer; yet in the absence of particulars that improper repairs were carried out in

respect of `B' phase, the trial court rendered such a finding. It was argued that there was no documentary evidence to show the presence of B.M. Satija, in the morning of 13.6.1997. Counsel said that the compliance report, dated 14.6.1997 (PW 108/AA) was disputed. The report of the handwriting expert, PW-92/B, (on a comparison with Satija's admitted signatures) shows that his signatures could not be commented, on the document. He also urged that the queries in regard to the General Diary register Ex.40/C (Q-1 & Q-2) contain the same opinion in Ex. 92/B while establishing A.K. Gera's handwriting in the register. Reliance was placed on the evidence of P.L. Bhardwaj (PW-40) that in cases of breakdown, there is no allocation of duties. Moreover, the compliance report PW-108/AA is suspicious, because the prosecution did not establish any practice of writing of such reports. It was argued that zone 1601, according to the evidence on record, was not the appellant Satija's beat, and it further established that as per practice, the employee or officer who used to attend the complaint would make the entry.

5.58 Counsel next argued that the trial court erred in convicting the accused Gera, since the timing and nature of the accident could not be established. It was submitted that the fire was not caused at the transformer end, but for unknown reasons, in the parking area. For this purpose, he urged that the timing of the accident was not 4-55 PM or thereafter, but earlier. Reliance was placed on the evidence of PW-14 (who talked about the fire breaking out at around 4-30PM or 4-45 PM); the deposition of PW-54, a tenant at Upahaar complex, who

stated that he saw the fire at about 4-45 PM, and the statement of PW-59, that he heard a loud bang at 5-00 PM. The contention was that the fire would have started much earlier than 4-55 PM, since it spread into the cinema hall by 5-00 PM and that if the prosecution version was correct, the evidence of PW-64, was that it would have taken at least 10-15 minutes of sparking for the socket to detach from the transformer. Relying on the testimony of other eyewitnesses it was submitted that the management of the parking area, and negligent parking of vehicles in all probability led to some fire, which engulfed the vehicles negligently parked, and led to the transformer catching fire.

5.59 It was argued that the prosecution story about the fire emanating from the transformer is beset with other inherent contradictions, borne out from the record, which undermine its case against the accused, entitling him to acquittal. In this regard, the contention was that since there was no eyewitness account of what exactly was the cause of the fire. The Court fell back on the opinion of experts, such as PW-24, PW-35 and PW-64, who did not speak in one voice, but discordantly. Counsel submitted that these experts were unclear whether the repairs in the morning were of the Y Phase, or the B Phase; even PW-44's evidence showed that the repairs carried out were of the Y Phase.

5.60 It was contended that the prosecution failed to prove conclusively, whether the fire actually started due to the alleged faulty repair of the transformer. Learned counsel submitted

that overheating of the transformer and the cables could have been the source of the fire. He stated that though the upper portion of the radiator and the edges were examined by the experts for signs of short circuit, the cable core and the conductor were never examined. Reliance was placed on the deposition of PW 35, who opined that the fire could also have been caused due to over current, due to an earth fault, in which case too the wire could have got detached and decoiled on the transformer fin, and that the tripping at the AIIMS grid took place due to over current. This witness also deposed as to how insulation material on the wire could have burned or some other material in the transformer room could have caught fire and further that fire could have started in the parking lot and later spread to the transformer room. Reliance was also placed in his observation as to how if the protection relays had existed, the accident could have been avoided as there would have been immediate tripping. Further, counsel sought to place reliance on the observations of PW 64, that fire could have been caused due to external sources too.

5.61 Counsel further relied on the statements given by PW 24, that there was sand in the transformer room floor, which was affirmed by PW 48. He stated since there was sand, the oil would have soaked in and flowed outside. PW 48 also stated that the transformer room level was lower than the parking lot; therefore, counsel contends that no oil could have flowed out. Moreover, the temperature at which the transformer oil vaporizes is 140 degree

Celsius, whereas the actual temperature in the transformer room at that time was far higher and consequently it should have vaporized instead of spilling out of the room.

5.62 It was submitted that neither was any crimping machine seized from the DVB office, nor were the dye and hammer, allegedly used by DVB employees in the morning seized and produced before the court. In the absence of these objects, the court could not, merely on the basis of oral evidence of experts, who speculated about the issue, convicted the accused, under Section 304 IPC, which presupposes knowledge of such high order that the likely consequence of the act is death. Counsel also submitted that the trial court failed to see that the relevant standards relied upon, Rule 12.5.3.5 provided for crimping for XCPE cables, not for PVC cables. The cable here was PVC, which is covered by 12.5.1.1, 12.5.1.2. and 12.5.1.3 . The cable seized from transformer was PVC cable; it is bereft of insulation. The difference between PVC 1xLPE cables is that XLRE is that one is armored and the other is not. In this context, the counsel pointed out that experts, such as PW-24 knew of ISI standards, and yet did not see the difference between PVC and DLPE cables.

5.63 The appellant next contends that PW-67 (Y.K.Luthra) Ex. Engineer, in his evidence deposed that joining cables with hammer and dye were as effective, as with a crimping machine and that hammer and dye were used in all cases by DVB/DESU The prosecution did not re-examine the witness or declare him hostile. Further, PW-40 and PW-73 could not

depose whether the cable could be fixed by crimping or with dye and hammer; they did not know whether any crimping machines standards existed, or were prescribed. It was submitted that the direct causes of the fire and deaths were negligence in parking, vehicles catching fire, smoke rushing into the building, due to chimney effect on account of structural deviations and defects, which were proved by the prosecution. This clearly pointed out to the culpability and criminal negligence of the Ansals and their employees. They were the cause of the death in which the accused employees of DVB had no role to play. Having decided to close the crucial exit in balcony, leaving the gates unmanned after bolting them, negligently omitting to ensure that exit lights and foot lights were working in order, the Ansals and their employees were directly responsible for the cause of death. Each of their actions, acts and omissions were reasonably foreseeable. The DVB accused, i.e. Satija, Bir Singh and Gera had no control over the affairs of the Ansals and the lack of fire safety norms by them. In the circumstances even if it were assumed that the DVB employees accused, had visited the site and carried out the repairs in the morning on that fateful day, their actions were not attributable for the deaths. The omissions and acts of Ansal employees were the cause of death. The trial court therefore committed a grave injustice in assuming that the appellants Satija, Bir Singh and Gera had knowledge of the shortcomings in the balcony. No evidence in that regard was led; there was no materials to support the findings and conviction in that regard.

5.64 It was additionally urged that DVB employees accused in this case were not even charged with having committed any offence or breach the provisions of DCR, 1953 or DCR 1981 and having committed offences under Section 14 of the Cinematograph Act. In these circumstances even the question of their duty of care and its breach was not established. Sushil Ansal and Gopal Ansal being the occupiers of the premises as well as owners, (since they were in effective control of the company), were squarely responsible. They had the primary or rather the only duty of ensuring safety of patrons. Their breach of that duty resulted in death of and bodily injury to several people. The DVB employees thus could not be held responsible, much less guilty of any offence.Learned counsel contended that the prosecution of the DVB employees was unfair and unjustified since the evidence on record clearly establish that after inspection on 22.01.1997, it was discovered that the transformer's protection relays were missing. These relays were crucial and would have tripped the DVB transformer in the event of any contingency such as over-current, earthing, sparking etc. PW-40's role here was extremely suspect. He had been suspended from service for his role and omission. Yet because of apparent proximity with the Delhi Police, he was able to get back into service and his statements were recorded as prosecution witness. In not proceeding against senior officers like PW-40 and others who were directly involved in the omissions, that were the direct cause of fire, the CBI unfairly prosecuted other lower level employees and the trial court convicted them without any convincing proof. In this regard, it was submitted that apart from protection relays, general standard of the transformer too had to be

adversely commented. The counsel submitted that at no stage did the Electrical Inspector inspect the cinema hall after it was installed in 1989.

5.65 It was submitted that the trial court committed an error in basing its conclusion and convicting the DVB accused predominantly on the evidence of experts. The decision in *State of U.P. Vs. Harbans Sahai,* 1998 (6) SCC 50 was relied on, to say that experts' evidence though admissible should not be the sole basis, for findings of a criminal court, but should be backed by other materials and circumstances, unerringly pointing to the guilt of the accused. In this case such measure of proof had not been achieved by prosecution; the trial court therefore could not have convicted the DVB employees. It was also submitted that sanction by DVB (Ex. PW 73/A) was not sustainable. The DVB employees particularly Satija and Bir Singh could not have been prosecuted since they worked under the colour of their office and acted in good faith. All the evidence nowhere established that hammer and dye used were contrary to the standards or that the crimping was done without due care. These accused were from the breakdown unit. The kind of work performed by them showed that there was no incident for more than four hours, after repairs, on 13.06.1997. Further, evidence on the record in the form of depositions of PW 41 and PW 48 showed that there was some fault at 1.30 PM in the DVB transformer. That fault was attended by the maintenance staff. This vital circumstance was left unexplained or commented by the prosecution; coupled with the circumstance there was a serious dispute, as to which phase has been rectified, the court

could not have concluded by any stretch of imagination that the DVB employees were guilty of the offence charged under Section 304A read with Sections 336/337 and 338 IPC.

5.66 Learned counsel lastly contended that the prosecution was unfair and tainted because apart from not proceedings against higher authorities within the DVB, the CBI deliberately did not seize the offending equipments alleged to have been used, it did not produce any site plan of the parking lot and made no attempt to trace owners of the vehicles, who could have also shed critical light about the incident. It was submitted that the first witness to reach the site, stated that the transformer room was open. If this contrasted with the testimony of PW 24 who deposed that transformer room had to be forced open, what can be inferred is that the site was within the control of accused 1 and 2, who manipulated the situation. Another vital flaw in the case was that the Malkhana register was not produced to show that the property was seized as well as the manner of its seizure, reliance was placed upon the decision reported as *State of Rajasthan Vs. Gurmail Singh,* 2005 (3) SCC 59. Resultantly, the appellant had to be acquitted.

Criminal Appeal No.33/2008 – Bir Singh

5.67 Mr. Shahzad Khan, learned counsel adopted the submissions made by the appellant Satija. It was urged in addition that absence of protection system was the crucial factor which caused the fire and not the crimping. Rule 64-A(2) of the Electricity Rules was clearly

violated; the responsibility for this was not of the DVB employees accused in the trial but of others. The CBI and the Court wrongly over-looked this aspect causing prejudice to the accused / appellants.

5.68 It was contended that the evidence further showed that no materials were seized from the spot and that the entire theory about transformer oil gushing out due to slit caused by the detaching of the cable with the socket and decoiling and setting on the transformer, and catching fire was inherently implausible. It was submitted that the cable socket was made of aluminum which melts at 600 degree Celsius; the transformer box on the other hand is made up of steel or iron, the melting point of which is not less than 1500 degree Celsius. It was nowhere shown by the prosecution that the sparking or even intense sparking for a few minutes could have resulted in the transformer cover or body melting, oil catching fire and spreading of flames, all in the manner of 10 minutes. Reliance was placed upon the evidence of PW 64 who was unclear as to how long, after the arching started, it took for the transformer body to melt for the creation of the slit on the transformer fin.

5.69 Learned counsel urged that there were other suspicious circumstances, left unexplained by the prosecution such as the transformer not being sealed till 27.07.1997, the transformer door being open on the date of the accident but shut on the next day when PW 24 inspected the site. Counsel also relied upon the circumstance that the possibility of

manipulation by those in charge of the site could not be ruled out since Police Authorities took possession of the site only on 17.06.1997. In addition to these, and the arguments urged on behalf of Mr. B.M. Satija, entitled Mr. Bir Singh to an acquittal.

Criminal Appeal N.56/2008 – A.K. Gera

5.70 Learned counsel for Mr. A.K. Gera, Ms. Rebeccal John adopted the general submission on behalf of Satija and Bir Singh but prefaced it by saying that Gera's role in the entire incident had not been proved. According to her the entire conspectus of evidence clearly pointed out to Gera not being assigned the task of attending the complaint, pertaining to the DVB transformer in the morning of 13th June, 1997. She relied upon the deposition of PW 40 who stated that that morning there were four complaints and that the assigning of work was not to Gera but to the others. Similarly the chalking out of the plan was not by Gera and PW 40 but with others. It was contended that the only job pertaining to Gera's circle was of Hauz Khas. Reliance was also placed upon the statement of PW 48 to say that Gera was not incharge of substation maintenance. This witness deposed according to the records, he was the Chief Engineer. This version was supported by PW 67, Executive Engineer Y.K. Luthra, as well as PW 73, who clearly deposed that A.K. Gera had nothing to do with Zone 1601 and that he worked only in zone 1603. It was urged importantly that PW 48 clearly mentioned that Satija, A.K. Gupta and P.C. Bhardwaj were responsible for substation maintenance.

5.71 Learned counsel next relied upon the document exhibited PW 48/DA, PW 48/DB and PW 72/DA-2, explaining why though he was initially suspended, after complete and thorough review the DVB authorities recommended his reinstatement on 17.07.1997. According to the DVB records and materials placed before the Court, all the officials clearly were of the opinion that Gera was not assigned the duty of repairing the Uphaar DVB transformer and could not be held responsible for the improper repair. It was submitted that reason for the presence of Gera was explained by PW 40 who stated that since only one vehicle was available to attend several complaints he was asked to accompany the accused Satija and Bir Singh. The witness clearly stated that there was one complaint pertaining to Zone1603, i.e. Hauz Khas. This was also corroborated by Gera's reply to the queries under Section 313 Cr.P.C.

5.72 Learned counsel submitted that the evidence of PW 44 Bhagwan Din shows that only Satija was acting and supervising Bir Singh who carried out the repairs in the morning on 13.06.1997, on the DVB transformer. This fact is also corroborated by PW-48 who stated that leads are to be repaired by the Electrical Fitter. In these circumstances the trial court could not have concluded that there was any glaring or culpable omission attributable to Gera. Similarly omission to use a crimping machine was not attributable to him.

5.73 As far as Ex. PW 40/C was concerned, counsel relied upon the deposition of the Bhardwaj PW 40 who stated that entry could be made by any one. Learned counsel relied upon the answer to queries under Sections 305, 306 and 313 put to Gera and submitted that the document ex. PW 40/A was written under duress, its original was not produced though it was given to the Court. The evidence of PW 40 itself establishes that it was not Ex. 40/A which was written in his presence; he also deposed hat he might have written that there was no deficiency in the transformer and the comment was completely absent in the document produced before the Court. It was submitted that the evidence of PW 108 about the circumstances whereby Ex. PW 40/A was seized, how it can be misplaced etc. cast a cloud on the document and its story so far it implicates Gera. Learned counsel submitted that the trial court completely omitted examination of Ex. PW 40/DX-1, PW 48/C and PW 48/BC, all of which established that duty list of Satija discloses that he had to attend such complaints. Gera on the other hand clearly stated in answer to queries under Section 313 that his zone i.e. 1603 contain as many as 120 transformers.

5.74 Learned counsel lastly submitted that the omission to examine Shri Navin Chawla which had purportedly granted sanction to prosecute Gera was fatal in the circumstances of the case. Reliance was placed upon the decision reported as *P.S. Rajaih Vs. State of Bhiar,* 1996 (Criminal) SCC 897. This was important because Shri Chawla consciously after reviewing all materials concluded that Gera had no role to play leading to his reinstatement.

On the same material, however, he granted sanction mindlessly. It was submitted that the Court completely erred in seeing that Gera could not have been vicariously liable in any manner since he was not charged under Section 34 or 149 IPC. In this case Section 36, which was sought to be invoked, could not have been relied upon as there was no material to establish any positive act or omission of Gera for which he could have been prosecuted. Counsel also submitted that the defence evidence and the replies given by the Gera to the queries under Section 313 furnished a plausible explanation that should have been legitimately accepted. Reliance was placed on *State of Maharashtra Vs. Laxman, AIR 1962 SC 1204* and *Hate Singh Vs. State of M.B.* AIR 1953 SC 468.

Criminal Appeal No. 4/2008 – H.S. Panwar

5.75 Mr. Shailender Dahiya, learned counsel for the appellant contended that Mr. H.S. Panwar, DO, was unjustly convicted for the offence punishable under Section 304A read Sections 337 and 338 and sentenced to undergo two year's rigorous imprisonment with fine. The counsel contended that the inspection was carried out in accordance with a proforma prepared by the Fire Department in 1994, in accordance with Delhi Cinematograph Rules, 1981. The procedure envisioned was that upon requisition by the licensing authority, an inspection date was usually settled mutually by the licensing department and the movie hall. It was submitted that the earliest inspection on record, Ex.37/J showed that 26 fire

extinguishers of various kinds were in the theatre. The subsequent document, Ex.33/H revealed that the number of fire extinguishers were increased to 31.

5.76 The counsel pointed out that each of the proformas on the record did not contain any column to disclose identity of the trained fire fighting personnel. He relied upon various inspection report proformas, such as PW-33/G and 37/AJ. It was submitted that Mr. H.S. Panwar did not inspect the cinema hall in 1995 and did so in 1996. The learned counsel relied upon Ex.32/AL to say there was no necessity for the inspection and that reference to the Chief Fire Officer had been deleted by the licensing authority. The Fire Department's *'no objection'* had reached the Licensing Department. Despite this, inspection was fixed for 04.11.1996. The inspection report (Ex.33/C) dated 18.11.1996 disclosed many deficiencies which were intimated. The cinema hall wrote back claiming that everything was in order after which the subsequent inspection took place on 22.12.1996 and a report (PW-33/D) was prepared on 24.12.1996. This, it was submitted, was corroborated by the note (Ex.49/C). The learned counsel submitted that although Mr. H.S. Panwar was on Casual Leave on 22.12.1996, yet before proceeding on leave, he was asked to go on inspection of Uphaar Cinema hall. He did so and later on returned and filed a notesheet (Ex.49/C). The counsel submitted that there was no suggestion in the queries under Section 313 Cr.PC that inspection had not been carried out by Mr. H.S. Panwar. It was submitted that no fault should be found with the inspection report as both Mr. H.S. Panwar and Mr. Surender Dutt, who accompanied

him discerned that everything was in order and that all fire safety appliances were working. The counsel also submitted that PW-49, the Chief Fire Officer did not find any fault with the last report (Ex.31/BB) when he went for inspection of the cinema hall after the incident.

5.77 Learned counsel submitted that the inspections had clearly showed that 31 fire extinguishers were at the site. They also revealed that there were no deficiencies regarding their number and location. The only exception was two carbondioxide extinguishers whose refilling date was 22.03.1997. As against these, the prosecution was unable to explain why 22 fire extinguishers only were recovered and sent to CFSL. Ex. P64/D, which dealt with particulars of the fire extinguishers and commented on their contents mentioned about only 22. It also showed that empty fire extinguishers indicated that they had been used during the fire accident on 13.06.1997.

5.78 Learned counsel next relied on deposition of PW-55, who clearly mentioned that there were fire extinguishers in ground floor and parking and were being used. Similarly he relied upon the statement of PW-59. It was urged that the Trial Court failed to see PW-78 who seized the fire extinguishers, mentioned that they were not tested, which was a clear lie. In this regard, learned counsel relied on Ex.108/ZZ-69, a photograph taken from the video, which showed the fire extinguisher being tested in the presence of Mr. H.S. Panwar at site after the incident. Learned counsel submitted that the evidence of PW-85 clearly revealed that

the fire extinguishers were used, before the Naresh Kumar Committee as per their instructions when they inspected the premises. Relying on Rule 40(1) of the DCR, 1981, it was submitted that operators had to know how to handle fire extinguishers and said appliances. In the cross-examination, this witness had stated that the lead for the Public Address System was broken. It was urged that the inspection by the Fire Department took place on 12.05.1997 whereas fire occurred a month later. Therefore, there could be no inference that the Public Address System was not in working order when inspected by the accused, Mr. H.S. Panwar. The inquiry report (Ex-31/DB) clearly showed that the Public Address System was there and had been tested. Significantly, the Public Address System was not seized. Similarly, the same document also shows that emergency lights existed and was working. Learned counsel submitted that the evidence of PW-34 in his report, answering to a query showed that the prosecution was unable to establish that emergency lights did not function. All that the report said was that electricity current was not used.

5.79 As regards the other findings of the Trial Court regarding careless inspection or absence of inspection, it was urged that the evidence of PW-85 and PW-49 clearly established that fire extinguishers were in the cinema hall and were also tested at the time of inspection. So far as the question of assessment of fire safety norms on account of absence of proper exits etc. was concerned, the closure of gangway was duly approved by the competent authorities, much before Mr. H.S. Panwar's coming into the picture. If he had made any

observations or adverse comment, he would have gone beyond his brief. Learned counsel submitted that in the absence of any charge against Electrical inspector or his subordinate officers who were said to have inspected the premises in May 1997 and gave their blind approval, Mr. H.S. Panwar could not have been charged and convicted. He and Mr. Surender Dutt duly inspected the premises in December 1996 and May 1997, satisfied themselves about the adherence to fire safety norms, existence of fire extinguishers, workability of the emergency lights and thus recommended the '*no objection'* certificates. The detailed proforma duly filled showed clear application of mind. That on 13.06.1997, some of these appliances did not function or were not operated was not within the domain or control of Mr. H.S. Panwar. The cinema hall and the balcony were not under the day-to-day management and control of Mr. H.S. Panwar. He was also not proved to have an obligation to visit the cinema hall each day before each show and test the fire safety appliances. Several events could have intervened between 12.05.1997 and 13.06.1997, leading to malfunctioning of the appliances for which Mr. H.S. Panwar could not be saddled with any manner of responsibility. It was lastly urged that the Trial Court committed an error in not even noticing much less adverting to the evidence of 14 DW-1, Mr. N.K. Bhatura, who corroborated that employees in the Fire Department also work on holidays at times.

Shyam Sunder Sharma and N.D. Tiwari

5.80 These two appellants were charged and convicted under Section 304-A IPC. The Trial Court held that they were guilty of criminal negligence, by issuing no-objection

certificates on behalf of MCD, which were on record of the Licensing Department. Learned counsel for these accused submitted that the prosecution had been unable to prove that they had any role to play. Commenting on the two no objection certificates, it was argued that after enactment of the Delhi Police Act, 1978, and framing of the DCR 1981, the MCD's role was not in relation to structural stability of cinema building, but only concerning storage of films and cinematograph equipment. It was urged that the DCP (Licensing) wrote to the Zonal Engineer on 20.04.1995 (Ex.39/DA), which was marked to one Mr. Sherawat, who marked it to accused Mr. S.S. Sharma. The latter merely noted on 28.09.95 that if agreed, the no objection certificate could be given. Thus, the document was issued. This did not lead to the license, which existed on the date of the incident; it expired few months later. Thus, even if it were assumed that such no objection certificate was issued casually, nothing further to show what was the duty of care owned by accused Sharma, how it was breached, and how damage or death for such breach was foreseeable, could be proved.

5.81 Mr. C.L. Thareja, learned counsel for Mr. N.D. Tewari, made similar submissions, and further argued that here too, the MCD received letter on 19.09.1996 (Ex.PW-23/DB) from the Licensing Department. The prosecution, however, did not establish that Mr. N.D. Tewari had a duty to inspect the premises. Like Mr. S.S. Sharma, he was an Administrative Officer, who went by the past practice indicated in the note sheet, and recommended issuance of NOC. For both the case, the technical persons, at senior levels were Junior Engineer and Executive Engineer, PW-39. Both could have taken pains to look

into the structural aspects of Uphaar Cinema, but did not do so. They were not even charged. The license issued by the Licensing Department, as a result of the NOC recommended by Mr. N.D. Tiwari expired on 31.03.1997. In these circumstances, absolutely no duty, its breach and forseeable damange by his actions were proved, much less proved beyond reasonable doubt, to justify a legal conviction.

Arguments on behalf of CBI

5.82 Mr. Harish Salve, learned senior counsel appearing for the prosecution - CBI urged that the Trial Court's findings have to be sustained as regards all the appellants. The counsel contended that the findings regarding installation of the DVB transformer, structural deviations noticed in the cinema premises and also brought to the notice of the management time and again; the changes made in the seating arrangement in the balcony between the years 1974 and 1980, the change in the character of the cinema building into a commercial premises, careless management of balcony, all have to be viewed cumulatively as the dominant cause for which the cinema management was responsible.

5.83 To emphasize that the positioning of the transformer was contrary to the mandatory safety requirements, reliance was placed on Ex.15/Y-11 and the Completion Certificate (Ex.PW-17/DA) which only talked of one transformer whereas two transformers were installed. It was urged that the Completion Certificate was issued in April 1973, but the

agreement to install the DESU/DVB transformer was signed later in the year and DVB transformer was installed actually in 1975 without any prior permission of the Building Department of MCD or Licensing Department. According to counsel, anyone who wished to install more than a transformer was under a duty to comply with the Bureau of Indian Standards (BIS) rules which postulated that if such transformers were located side-by-side, they should be separated by fire separation walls. Reliance was also placed upon the Clause k8.4 of the MCD Building Bye-Laws, 1983 which mandated that transformers would be protected by high-pressure water spray or foam-sprinkler system. Further, the essential safeguards prescribed under BIS rules for indoor transformers were not adhered to. The counsel urged that the DVB's negligence in seeking statutory approvals or not maintaining the transformers in proper repair could not absolve the responsibility of the first two accused who were owners and occupiers of the cinema building, both under the Cinematograph Act and under the Electricity Act and Rules. Their duty of care increased when they allowed and agreed for the installation of DVB transformer – an act unsupported by any legal authorization or permitted by any rule or regulation.

5.84 It was next urged that a combined reading of the sanctioned plan (Ex.PW-15-Y/11), reports (Ex.PW-2/A & Ex.PW-29/A); balcony lay-out plans (Ex.PW-15-Y/3 & Ex. PW-15/X-7), all show that the rear wall was permitted only upto parapet height, i.e. three feet. It was urged that there was a discrepancy between the plans seized from the MCD office

(Ex.PW-15/X-7 & Ex.PW-15/Y-3) on the one hand and the plan relied upon by the defence (Ex.PW-102/C-2). It was submitted that latter plan (Ex.PW-102/C-2), no doubt, contains a red colour to denote modification of that segment of the wall. However, the plan seized from MCD and PWD did not contain any such modification. The Trial Court, therefore, rightly concluded that a full height wall of 17 feet was impermissible and it had caused blockage of natural ventilation which existed behind transformer room.

5.85 It was contended that the petrol and diesel vehicles parked in the passage outside the transformer room in an objectionable manner whereby vehicles were located in the immediate vicinity of the transformer, led to the fire engulfing the entire area, resulting in dense high smoke which spread upwards and entered the balcony, choking 59 patrons to death and causing grievous hurt to 100 others. This parking was contrary to the sanctioned plan. Further, only 15 cars could have been parked in the area whereas evidence showed that 28 cars had been, in fact, parked. The report of PW-2 showed that this blockage of the 16 feet passageway in the parking area was not authorized. Similarly, the report of another expert (Ex.PW35/A) also supported the conclusion that fire was aggravated due to such parking of vehicles. The parking contract (Ex.PW-56/A) was signed by accused Mr. Gopal Ansal. This did not disclose any kind of instruction to the contractor regarding the manner of parking of vehicles or their number. This also nowhere showed that the parking contractor was made

aware of the need to maintain free passage for vehicles and keep them away from the transformer room.

5.86 Learned counsel contended that the construction of an illegal dispensary, R.S. Joists and several other deviations in many parts of the building, both, on the one hand, contributed to the *'Chimney Effect'* whereby the smoke which heightened from the ground floor, went upwards and entered the balcony and, on the other hand, also caused hindrance for the movement of patrons wishing to flee the aftereffects of smoke. It was submitted that the existence of the dispensary was adversely commented upon in Ex.16/E. A similar position was maintained in respect of R.S. Joists. These were corroborated by the reports of experts submitted by the prosecution (Ex.PW-2/A, Ex.PW-29/A and Ex.PW-39/B). The wooden structures on the R.S. Joists were completely burnt; this was also supported by the report (Ex.PW-25/A). Learned counsel relied upon the findings and the evidence and submitted that the materials on record established that there was load-shedding between 03.55 pm and 04.55 pm. The General Diary Register (Ex.PW-43/A) maintained by DVB showed that the fire was reported at 05.00 pm. The AIIMS grid tripped-off the supply at 05.05 pm. The first complaint was made by Mr. K.L. Malhotra only at 05.10 pm, i.e. ten minutes after the complaint to the DVB. This is evident from PW-96/E and PW-49/E. All the while, the screening of the movie continued; the air-conditioner kept working, sucking-in the smoke which entered the balcony through the air-conditioner ducts. All these were corroborated by eyewitness accounts as well

as reports of experts (Ex.PW-25 & Ex.PW-64). The cinema management was completely negligent in not taking prompt steps to inform the patrons who were seated inside the hall, particularly in the balcony, to facilitate their swift and early escape. By the time they reacted, it was too late.

5.87 Learned counsel submitted that the major causes of death apart from the negligence repair of the transformer were the deviations in the balcony. Initially, the cinema was permitted 250 seats in the balcony. However, at the time of the incident, the total number was 302 and after the seats in the two owner's balcony were included, it was 324. It was urged that the inspection room was converted into a 14-seater box in 1974. Later, on 30.09.1976, a notification was issued permitting 43 seats to be added in the balcony. At this stage, the cinema management completely closed the right-side gangway contrary to the DCR, 1953 which directed that two gangways on either side were to be maintained, leading to exits, from the balcony. The closure of this gangway led to the blockage of right-side exit, in 1978. In 1979, the Delhi Administration withdrew the earlier notification permitting the increase of seats. This was challenged by cinema management, including the Uphaar Cinema. This Court, in its judgment recorded the concerns of the Fire Department and directed an examination of the issue on a case-to-case basis upon inspection of the concerned cinema hall. The Court also directed that having regard to the seriousness of the matter, the authorities should ensure substantial compliance with the regulations. In this view, on

06.12.1979, the Licensing Department issued a Show Cause Notice to the cinema hall for restoration of the pre-September 1976 situation which meant opening up of the right-side gangway and removal of 43 seats. The cinema management resisted the move and after inspection, the Licensing Department permitted 37 seats. This, however, meant that there was no endorsement about compliance with DCR, 1953. Norms such as the gangway regulations which prescribed several things, such as width of the gangway, number of gangways having regard to the total number of seats; location of the gangway, location and number of exits having regard to the total number of seats etc. were norms that were non-negotiable.

5.88 Learned counsel contended that the Parliamentary concern for safety of those visiting the cinema halls to watch the performance is manifested in several provisions. The Act prohibits everyone from exhibiting cinemas except with a license; such licenses cannot be granted unless the occupier or owner of the premises fulfills all the norms prescribed under rules. Section 12 manifests the intention that the licensing authority should be satisfied not only as regards the matters prescribed under the rules, but also that all measures for safety of the patrons to the cinema hall, to his satisfaction, have been taken. He referred, particularly, to Section 12(2)b which empowers the licensing authority to insist upon adequate precautions for the safety of persons attending cinema exhibitions over and above compliance with the rules adverted to under Section 12(a). It was further submitted that Section 14 prescribes for penalty for contravention of the Act and the owner or persons

incharge of a cinematograph, who uses it or allows it to be used in contravention of the provisions of Part 3 (Regulations of Exhibitions) of the Act.

5.89 Learned counsel submitted that having regard to the statutory intention expressed under provisions of the Act as well as the norms prescribed in the First Schedule to the rules, both 1953 and 1981 Rules, which are in *parimetiria* the owner and occupier and the person incharge of the cinema hall, are at all times absolutely responsible for the compliance with such standards. This duty of care is of high degree since the lives and safety of several persons is placed absolutely in the hands of such occupiers, owners or persons incharge. Safety responsibility arises not only in regard to fire safety norms but also in regard to other related emergency-like situations which necessitate speedy evacuation of those inside the cinema hall. Learned counsel submitted that the materials on record conclusively showed that these norms were successively breached from 1976 to 1980 by the closure of the right-side gangway, blockage of the right-side exit and placing of additional seats in the balcony. Further, as against required three exits (1 for each 100 seats), the cinema only had two exits and those two were in one direction, i.e. left direction. The evidence in the form of Ex.PW-64/D, corroborated by other experts clearly showed that at the relevant time, when smoke spread upwards, the patrons found it extremely difficult to leave from the right-side which was not smoke-affected initially. This was corroborated by eyewitness accounts of the

patrons who were seated on the right-side. The cinema management was responsible for these acts and omissions.

5.90 It is contended that the cinema management could not hide behind various permissions granted by the Licensing Department and inspections carried-out from time to time by the Fire Department or the Electrical Inspectorate or the MCD. Such No Objection Certificates or approvals could legitimately be put up as defences in good-faith the underlying principal condition for an application of Section 79 IPC. Learned counsel relied upon the said inspection reports and approvals and submitted that vital considerations, such as fire hazard on account of transformers located in the parking, blockage of fire exits in the balcony and the various deviations are acted so seriously resulting in several deaths and injury to several others, did not even find mention in such approvals. It was submitted that the approvals and certificates being mindless exercise could not confer any immunity to hold the cinema management blameless. In terms of Section 14 of the Cinematograph Act as well as duty to the patrons explicitly recognized by Section 12(b), the cinema management owed it to the patrons visiting it that all measures mandated by the DCR norms were fully complied with. In this respect, it was urged that the expression "*substantial compliance*" means substantial compliance of all the norms and not merely that some norms are complied fully whereas a few are left-out. When speaking of safety standards, society pre-eminently dictates

that every norm which would aid the safety and security of cinema viewers is complied and would not be satisfied with lip-service to some and half-hearted submission to others.

5.91 It was urged that the Trial Court findings with regard to accused 1 and 2 being incharge and controlling affairs of the company leading to all vital decisions relevant in this case were justified on the basis of materials on record. Thus, the decisions relating to installation of DVB transformer contrary to MCD plans and bye-laws; entire set of decisions concerning changes in seating-plan in the balcony, placement of boxes – most crucially, blockage of the right-side exits; and the obstructions caused by installing additional seats, were all taken by accused 1 and 2. Although they have shown themselves to have dissociated themselves from the company in October 1988, their continued and substantial engagement with its affairs was emphasized and borne-out by the evidence. This was in the form of minutes of board meeting which authorized them to operate company's accounts without any limitation even in 1997; authorization to create binding encumbrances on the company's assets but for the benefit of some other corporate entity; depositions of several other directors, including those who are in the Board of Directors at the time that they were not aware as to what was happening in the company; the fact that first accused was described as a licensee right upto 1997 and had applied for a renewal of license in 1992, all pointed to such accused being owners of the cinema premise, they seeking shareholder under a corporate entity. Counsel further emphasized that the entire shareholding pattern of the company

disclosed through evidence of PW-87, who produced the returns and other vital documents revealed that the company was a complete family under one whose share holdings were juggled and at the given point of time when the accident occurred, the family members of the accused owned more than 60%. In any event, the accused 1 and 2, for all purposes, were the company. The first accused was proved to have withdrawn substantial amount of Rs.50 lakhs from the company bank account in 1995; the second accused also withdrew from the bank accounts. Both these were after they ceased to be Directors.

5.92 It was submitted that with every deviation in the building and unauthorized construction, not only did the character of the cinema premises change into one where it became commercial establishment, but also increased the risk factor which had become fairly high with the installation of the DVB transformer. The changes in the balcony only heightened these risk factors to a very high degree. The accused, particularly, appellants 1 and 2, under the circumstances should have had reasonable foresight that if the norms were not complied with, in the event of an accident, the evacuation of patrons would be an extremely difficult task, thus exposing the lives of such viewers and posing danger to public health. These were underlined by the fire incident which occurred in the night of 06.07.1989 which ought to have served as a warning signal. At that time too, the transformer caught fire, damaged the Uphaar Cinema transformer, leading to hot gases entering the cinema hall; such gases also went in near the screen and through the duct; patrons had to be evacuated even then. Despite such incident, the cinema management and accused 1 & 2 did not awaken. The

incident of 13.06.1997 was a repeat of what happened earlier but on a far greater scale since the fire engulfed a large number of vehicles parked improperly. The smoke which entered through the AC ducts from multiple points into the balcony was inhaled by patrons seated there who were unable to leave the balcony fast enough due to the obstructions. The cinema management, through accused 1 and 2 were, therefore, rightly convicted for the offence under Section 304A IPC read with Sections 337/338 and 36 IPC.

5.93 Commenting upon the role of Manmohan Uniyal, it was submitted that documents as well as Ex.PW-97/C and deposition of PW-97 established that he was the gateman; the duty rosters clearly showed that he was present and had reported for duty on 13.06.1997. Counsel submitted that '*men may lie but circumstances do not'* and that the documents did not show that Uniyal had signed out on that day. In any event, he should have been in the balcony till he was relieved at 05.00 pm. Eyewitness accounts conclusively prove that he was not present when the smoke entered the balcony. Therefore, the Trial Court's conclusions and findings, convicting him under Section 304 Part II IPC had to be sustained.

5.94 Similarly, learned counsel urged that the evidence of patrons who were in the balcony clearly revealed that there were no arrangements indicating that exit lights/footlights were ON. Consequently, there was pitch darkness when smoke entered the balcony. The exits were also bolted. The Fire Department employees also corroborated this. In addition, it was

established that there was no attempt by anyone to assist the patrons trapped in the balcony to escape from it. In such circumstances, the role of the managers, who were to ensure supervision of gatemen and whose duty was to supervise and ensure that all safety precautions were taken during the exhibition, had been breached. The morning incident whereby the fire had occurred around 07.00 Am ought to have alerted these managers in light of the 1989 incident but it seems failed to do so, since they allowed the show to go on without being fully satisfied that all possibility of an accident was eliminated. Nevertheless, these managers, i.e. Mr. N.S. Chopra, Mr. R.K. Sharma and Mr. A.K. Chaudhary negligently allowed the show to go on, leading to such horrific consequences. They also criminally omitted to react within time when were the patrons were inside the balcony and failed to take effective timely measures for evacuation. Instead they fled from the scene knowing fully well that the patrons in the balcony would have certainly died. Their conviction under Section 304 Part II was, therefore, justified.

5.95 It was next argued that the cause of fire was fully established as defective and improper crimping without the aid of a crimping machine, as mandated by the ISI norms. Accused Satija, Bir Singh and A.K. Gera were deployed for the purpose of attending to the complaint. PW-44 clearly deposed that Bir Singh repaired the transformer, replacing the cable-end-socket not with the aid of crimping machine but with the help of dye and hammer. A few hours later, upon the electricity being restored, the improperly crimped cable fell down

due to sparking, rested on a transformer fin, causing a slit due to intense sparking, lit the oil which gushed out, resulting in the smoke and fire which also spread to the vehicles. The evidence of PW-48, PW-73, PW-24 and PW-64 as well as technical reports, PW-64/D, PW-24/A, PW-35/A and PW-36/A fully corroborate the cause of fire and establish that it was the dangerous and improper crimping. Undoubtedly, if protection relays were installed, they would have tripped electric supply and avoided the accident. Yet, the absence of such relays did not detract the role of these accused since they should have known that the consequence of their act could inevitably be a fire that would certainly result in death or cause such grievous injury that would lead to death of some, if not many people. The accused could not plead ignorance because they were aware that there was no protection relay; they were also aware that a similar incident had occurred in 1989 and further that there were several other deficiencies in the transformer at that time. Most importantly, these accused were aware that the DVB transformer was located in the parking area where almost certainly vehicles would be parked during a show, aggravating chances of a big fire in the event of sparking that was to unavoidably happen due to improper crimping. Their conviction under Section Part 2 read with Section 36 was, therefore, justified.

5.96 Learned counsel then urged that the conviction of Mr. H.S. Panwar, the D.O. from the Fire Department under Section 304A read with Sections 337/338 was justified and based on law. He relied upon the inspection reports prepared by the said accused Mr. H.S.

Panwar in 1994, April 1996, 18.11.1996, 24.12.1996 and 12.05.1997. It was urged that these showed a mechanical attitude and particularly, non-application of mind. Furthermore, the Trial Court, based on the evidence led before it found that Mr. H.S. Panwar supposedly inspected the Uphaar Cinema on 22.12.1996 when he was actually on leave. This fact was proved by documents in the form of the leave file of DVB and the testimony of witnesses. In such circumstances, the inspection reports and the no objection certificates issued were unworthy of credence. His actions amounted to criminal breach of the duty of care to ensure that all fire safety precautions were complied with in terms of DCR, 1981 and the Delhi Fire Safety Act, 1986. Being an expert who was expected to know the consequence of his omission or callousness, in his case, foresee ability was of a high order. His conviction under Rule 304A read with Section 337/338 and 36 IPC was, therefore, justified.

5.97 It was argued that so far as accused/appellants Mr. S.S. Sharma and Mr. N.D. Tiwari are concerned, though they were not engineers or experts, their actions in issuing no objection certificates and handing them over directly to the cinema management, without any inspection by the concerned authorities, was a criminal dereliction of duty. Such actions facilitated the cinema management to secure renewals and temporary permits. They too would have reasonably foreseen that mechanical and automatic issuance of such no objection certificates was a dangerous and risky act that would have inevitably resulted in death of

patrons or danger to public health. Their conviction under Sections 304A/337/338 IPC was also justified.

VI. Preliminary Questions of Law

Before a detailed finding on facts and law, this Court deems it appropriate to deal with certain preliminary questions of law raised by the counsel during the course of the arguments. These relate to the framing of charges under section 211 of the CrPC, issues relating to the examination of the accused under section 313, the defense taken under section 79 of the IPC, the objection taken by the first and second accused as to the admissibility certain documents and their objections about inspection of site of the accident by the judge.

6.1 *Section 211 – Whether accused were prejudiced by the nature of charges framed?*

6.1.1 The general argument of Appellant- accused, particularly the first and the second were that charges framed, and held proved, were defective, and resulted in prejudice to them. It was specifically urged that the trial court did not specify the dates or period(s) when the offences took place. In relation to the first charge of "allowing" DVB to install the transformer, the time frame was over two decades. Secondly, allusion to a specific provision of law, and its violation, i.e Section 14 of the Cinematograph Act, by only two accused, and absence of such reference to any other law or rule, or regulation, spelling out standards, such as the ISI Code, provisions of the Electricity Act, and Building bye laws, etc, vitiated the

trial. All accused appellants urged this ground, and additionally submitted that this omission caused prejudice, as did absence of any reference to the role played by each one of them, in regard to specific acts or omission, and their co-relation with provisions of law, which they were found to have violated, leading to their conviction.

6.1.2 As far as accused Sushil and Gopal Ansal are concerned, they were charged with negligently allowing DVB to install a transformer, and also for various deviations, from the structural and fire safety point of view, in contravention of various Acts and Rules by their negligent acts in not facilitating the escape of the patrons seated inside the theatre on 13.6.97 to view ' 'BORDER' movie during 3 to 6 p.m. matinee show, which were negligent acts not, amounting to culpable homicide and thereby committed an offence punishable u/s 304A IPC r.w 36 IPC. A similar charge was framed for the offence under Sections 337, 338, IPC, on account of fire in DVB transformer and spread of highly toxic gases inside the building by their negligent acts and omissions of showing deviations from structural and fire safety point of view in the building resulting in spreading of highly toxic gases generated due to severe fire in the DVB transformer in stalled in the Uphaar cinema. The third charge was that they were the licensees/incharge of Uphaar cinema (Ansal Theaters and Clubotels Pvt Ltd.) and allowed the said theatre/cinematograph to be used despite deviations from structural and fire safety angle etc in contravention of the provisions of DCR, 1953 and Delhi Cinematograph Rules 1981 and thereby committed an offence punishable u/s 14 of Cinematograph Act 1952.

6.1.3 The position regarding other employees of GPT, ie. accused N.S. Chopra, K.K. Sharma, Ajit Chaudhary, and Manmohan Uniyal is that, the charges were commission of acts amounting to culpable homicide not amounting to murder by causing death of 59 persons/patrons beside simple and grievous hurt to about 100 persons/patrons who had come to view ' BORDER ' movie during 3 to 6 P.M. matinee show and by their acts and omissions fire took place inside the transformer installed in the Uphaar cinema building and highly toxic gases generated inside the cinema and spread inside the theatre and by their failure to inform, alert and facilitate the patrons seated inside the theatre to escape from inside the building and their act were offences under Section 304 r/w 36 IPC. The DVB officials and employees, M/s Satija, Bir Singh and A.K Gera, were charged with culpable homicide not amounting to murder by causing death of 59 persons/patrons beside simple and grievous hurt to about 100 persons/patrons seated inside Uphaar cinema building to view ' BORDER ' movie during 3 to 6 p.m. matinee show by their acts and omission in not properly repairing the DVB transformer installed in the said Uphaar cinema building in which fire took place in the morning of 13.6.97 by using the required crimping machine with the knowledge that the said act on their part was likely to cause death or such bodily injury to others which was likely to cause death as a result of such failure/faulty repair on their part. The argument on behalf of these set of accused is that they have not been charged under any provision of the Cinematograph Act; only the first two accused were so charged. The absence of these charges

meant that they were not accused for violating any such, or other law. The findings rendered by the trial court, holding them responsible for the acts and omissions of other accused, are without a charge and therefore, vitiated.

6.1.4 The relevant provisions of the Criminal Procedure Code, 1973, dealing with the requirements that courts have to follow, while framing charges, are set out below:

> "Section 211 CONTENTS OF CHARGE.
> *(1) Every charge under this Code shall state the offence with which the accused is charged.*
> *(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that time only.*
> *(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.*
> *(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.*
> *(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.*
> *(6) The charge shall be written in the language of the Court.*
> *(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.*
>
> *Section 212 PARTICULARS AS TO TIME, PLACE AND PERSON.*
>
> *(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.*

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219 :
Provided that the time included between the first and last of such dates shall not exceed one year.

Section 213 WHEN MANNER OF COMMITTING OFFENCE MUST BE STATED.
When the nature of the case is such that the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.
xxxxxxxx xxxxxx xxxxxx

Section 215 EFFECT OF ERRORS.
No error in stating either the offence or the particulars required to be stated in the charge, and no of omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.
xxxxxxxx xxxxxx xxxxxx

Section 464 EFFECT OF OMISSION TO FRAME, OR ABSENCE OF, OR ERROR IN, CHARGE.

(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.
(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may -
(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge;

(b) in the case of an error omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit;
Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction…"

6.1.5 The provisions set out above require particularization of the incidents forming part of the offence, and indicate the offence which the accused is charged with. Often these issues have confronted the courts, when accused have complained about omission in framing of charges, or the criminal courts not pointing with specificity, the offences allegedly committed, or the acts amounting to infraction of particular laws. In *State Of West Bengal, V. Laisal Haque & Anr* (1989) 3 SCC 166, the Supreme Court considered the issue and observed that:

"Section 215 of the code provides that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice. There is no material on record on which the High Court could have reached to such a conclusion. We may next refer to S. 221 of the Code which provides by sub-section (1) that if 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, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. Sub-section (2) thereof provides that if in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.
8. Next, S. 464 of the Code provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground

that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact, been occasioned thereby.

9. In the celebrated case of Willie (William) Slaney v. State of Madhya Pradesh, (1955) 2 SCR 1140 : (AIR 1956 SC 116), Nivian Bose, J. speaking for the Court after an elaborate discussion observed that in judging a question of prejudice, as of guilt, the Court must act with a broad vision and look to the substance and not to the technicalities, and their main concern should, be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chace to defend himself. That test is clearly fulfilled in the fact and circumstances of the present case. The principles laid down by that very eminent Judge is Slaney's case have throughout been followed by this Court. See K. C. Mathew v. State of Travancore-Cochin, (1955) 2 SCR 1057 : (AIR 1956 SC 241), Gurbachan Singh v. State of Punjab, AIR 1957 SC 823, Eirichh Bhuian v. State of Bihar, 1963 Suppl (2) SCR 328 at Pp. 336-37 : (AIR 1963 SC 1120 at P. 1123) and State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463 : (AIR 1982 SC 1249).”

A similar view was expressed in *Lallan Rai v. State of Bihar* 2003 (1) SCC 268. In *State (NCT of Delhi) v. Navjot Sandhu* 2005 (11) SCC 600, it was held that:

*“It is settled law that a 'fundamental defect' should be found in the charges if the Court has to quash it. Whether the accused was misled and whether there was reasonable possibility of prejudice being caused to the accused on account of defective charges are relevant considerations in judging the effect of wrong or deficient charges. Section 215 of Cr. P.C. makes it clear that no error or omission in stating either the offence or the particulars required to be stated shall be regarded as material unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice. The test of prejudice or reasonable possibility of prejudice was applied by this Court in William Slaney's case (AIR 1956 SC 116) (1956 Cri LJ 291) in testing the argument based on the omission, error or irregularity in **framing the charges. The same test was also applied in State of** A.P. v. C. Ganeswar Rao ((1964) 3 SCR 297) (AIR 1963 SC 1850 : 1963 Cri LJ 671). It has not*

been demonstrated in the instant case as to how the accused or any of them were misled or any prejudice was caused to them on account of the alleged defects in ***framing of charges****. No such objection was even taken before the trial Court. As pointed out in William Slaney's case (AIR), it will always be material to consider whether the objection to the nature of charge was taken at an early stage. To the same effect are the observations in Ganeswar Rao's case (supra). It is difficult to spell out with exactitude the details relating to the starting point of conspiracy. As pointed out in Esher Singh v. State of A.P. ((2004) 1 SCC page 585, 607) (2004 AIR SCW 1665 : AIR 2004 SC 3030 : 2004 Cri LJ 5021), it is not always possible "to give affirmative evidence about the date of formation of the criminal conspiracy". We do not think that if instead of mentioning 'the first week of December, 2001' the wording 'before December, 2001' is employed, the prosecution should fail merely for that reason. The accused cannot be said to have been misled or prejudiced on that account. On the other hand, it is more than clear that the accused did understand the case they were called upon to meet. The question whether Section 120B applies to POTA offences or Section 3(3) alone applies is not a matter on which a definite conclusion should be reached ahead of the trial. It is not uncommon that the offence alleged might seemingly fall under more than one provision and sometimes it may not be easy to form a definite opinion as to the Section in which the offence appropriately falls. Hence, charges are often framed by way of abundant caution. Assuming that an inapplicable provision has been mentioned, it is no ground to set aside the charges and invalidate the trial."*

6.1.6 In this case, the charge sheet elaborated the role of each accused. The trial court spelt out, likewise, what were the charges. No doubt, the charges did not specify or particularize each act, omission or circumstance. The acts did span over a period of time, as urged on behalf of the first two accused. Yet, these "omissions" cannot be termed fatal, or such fundamental defects as to vitiate the trial. The acts and omissions in relation to Cinematograph Act have to be viewed as allegations regarding contravention of provisions which were to be complied with at all times, and at any rate, each time a cinema performance was exhibited. In that sense, there was breach of a continuing obligation, pointed out in the charges. Similarly, the generic reference to contravention of other provisions, dealing with

deviations, could not have prejudiced the accused, as they were made known these provisions, during the trial, and also asked questions under Section 313, Cr PC.

6.1.7 So far as the complaint of the other appellants is concerned, though the first two accused were charged with being licensees under the Cinematograph Act, and having infracted its provisions, their roles were spelt out in general terms, but with specific reference to the acts or omissions they were responsible for. They too were made aware of the provisions during the trial, and queried under Section 313.

6.1.8 For the above reasons, it is held that the charges were not framed defectively; the accused appellants have not been able to substantiate their ground of the charge framing exercise being riddled with such fundamental defects as to result in miscarriage of justice, the standard prescribed in Section 464 and 215, Cr PC. Further, they were aware of all the materials presented during the trial, against them; the advertence to specific provisions of law was also made in their questioning by the court, under Section 313, Cr. PC. There is no grave prejudice discernable by the court, impelling a conclusion that the trial was vitiated.

6.2 *Duty of the Court to put Incriminating Evidence to the Accused*

6.2.1 Section 313 of Cr.PC reads as follows:

> *Power to examine the accused. - (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court -*
> *(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;*

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case :
Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may dispense with his examination under clause (b).
(2) No oath shall be administered to the accused when he is examined under sub-section (1).
(3) The accused shall not render himself liable to punishment by refusing to answer such question, or by giving false answers to them.
(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

6.2.2 In *Basavraj R. Patil, Vs. State of Karnataka,* AIR 2000 SC 3214 a three judge decision of the Supreme Court reviewed the entire previous law on Section 313, including the rulings in *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793; *Usha K. Pillai* (supra)*;* and *Bibhuti Bhusan Das Gupta v. State of West Bengal*, (1969) 2 SCR 104; it also considered the previous provision, i.e Section 342 of the old Code as well as recommendations of the 41st Report of the Law Commission and held as follows:

"18. What is the object of examination of an accused under Section 313 of the Code ? The section itself declares the object in explicit language that it is "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". In Jai Dev v. State of Punjab, AIR 1963 SC 612 : (1963 (1) Cri LJ 495), Gajendragadkar, J. (as he then was) speaking for a three-Judge Bench has focussed on the ultimate test in determining whether the provision has been fairly complied with. He observed thus (Para 21 of AIR and Cri LJ) :
"The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the

examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity."
19. Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the Court in reaching the final conclusion."

Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 was an earlier decision of the Supreme Court, rendered in the context of the previous provision, Section 342 of the 1898 Code. The court observed that :

"It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, CrPC, the omission has not been shown to have caused prejudice to the accused."

It was held, in *Lallu Manjhi v. State of Jharkhand,*(2003) 2 SCC 401 that:

"It is obligatory on the part of the trial court to examine the accused for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him. If such opportunity is not afforded, the incriminating pieces of evidence available in the prosecution evidence cannot be relied on for the purpose of recording the conviction of the accused persons."

6.2.3 It has been held that 'generally' in Section 313 (1)(b) does not limit the **nature of the questioning to one or more questions** of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The questioning should enable the accused to know what he is to explain, what are the circumstances appearing against him for which an explanation is needed. The object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him; the questions must be fair and must be couched in an intelligible form which an ignorant or illiterate person will be able to appreciate and understand. In *State (Delhi Admn.) v. Dharampal* (2001) 10 SCC 372, it was held that:

> *"That it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred, that does not Ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellant court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him".*

The test of how to examine the accused, and the likely consequence of defective questioning by the court, was spelt out, long ago, in the decision reported as In *Jai Dev v. State of Punjab,* AIR 1963 SC 612 where the court held that:

> *"The Ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to inquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity."*

In *Bakhshish Singh v. State of Punjab*, AIR 1967 SC 752, a three judge bench of the Supreme Court held that:

> *"It was not all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section"*

6.2.4 The common thread of reasoning discernable from the above decisions is that the object of Section 313 is to afford a fair opportunity to the accused, to answer to all queries put to him by the court, after the prosecution concludes the examination of its witnesses. This is to afford him a chance to furnish an explanation to the court, in regard to circumstances that are deemed incriminating, adduced during the trial. Anything not put to the accused, cannot be used against him by the court. The questioning should be done in an intelligible manner, enabling the accused to apply himself to what are incriminating materials. While examining whether the court has not complied with the provision, the question to be answered is whether the defect in doing so, in that particular case prejudiced the accused; if the idea of what was being elicited was conveyed, intelligibly the trial or findings are not vitiated.

6.2.5 Keeping the above principles in mind, this court proposes to take up the argument of compliance or non-compliance with Section 313 Cr. PC, as the case may be in relation to each accused, separately, when dealing with their appeals.

6.3 *Section 79 IPC and the effect of "No objection" certificates and approvals*

6.3.1 A great deal of argument was made by counsel for the accused on the applicability of Section 79, Indian Penal Code. The provision reads as follows:

> *"ACT DONE BY A PERSON JUSTIFIED, OR BY MISTAKE OF FACT BELIEVING HIMSELF JUSTIFIED BY LAW.*
> *Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.*
> *Illustration*
> *A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence."*

6.3.2 The appellants contend that they cannot be faulted, or held responsible for the wrong assessment regarding statutory compliances. They emphasize that seating in the balcony was approved by the licensing authority, which further inspected the premises, year after year and issued no objection certificates. Similarly, all other agencies, such as the MCD and the DFS, inspected the premises and granted the necessary clearances and approvals. Being expert agencies created for such specific purposes the appellants could legitimately rest easy after such bodies issued their certificates. The Appellants could not now, be held as failing to act

in accordance with law; they, at all times, under bona fide belief, acted on the basis of such certificates and approval. Section 79 exonerated them. They also complain that the trial court, without charging them with conspiracy, or under Section 34, rendered finding after finding that they "connived" in securing such certificates, with public officials. The appellants rely upon the judgment of the Supreme Court reported as *Rajkapoor Vs. laxman* 1980 (2) SCC 175. Counsel urged that the decision is an authority on the point that issuance of a statutory certificate by an authority empowered to do so under law – in that case the Censor Board – armed the beneficiary with the defence of a bona fide act, justified and not punishable, in answer to the charge of commission of an offence.

6.3.3 The prosecution on the other hand urged that the certificates and clearances issued by MCD, DFS and the licensing authority were suspect, and in dereliction of duty of the officials who did so. The cinema management and Accused No.1 and 2 cannot drive any comfort from them, since the requirements of DCR are clear; these certificates could not be used. Moreover, the said accused were under a continuing duty to ensure safety of patrons at all times, during each show. The grant of approval or certificates therefore did not result in any immunity from prosecution. Reliance was placed on the decisions reported as *Raj Kapoor Vs. State* 1980 (1) SCC 43 and *Jayantilal Vs. Katakia Vs. P. Govindan Nair* 1981 (2) SCC 423, to say that such certificate are not conclusive, and their efficacy can be repelled by positive evidence.

6.3.4 Section 79 talks of acts done "in good faith". Good faith has been defined in Section 52, IPC as follows:

> *GOOD FAITH: Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."*

In *Raj Kapoor v. State, (1980) 1 SCC 43* the Supreme Court held that:

> *"I am satisfied that the Film Censor Board, acting under Section 5-A, is specially entrusted to screen off the silver screen pictures which offensively invade or deprave public morals through over-sex. There is no doubt — and Counsel on both sides agree — that a certificate by a high-powered Board of Censors with specialised composition and statutory mandate is not a piece of utter inconsequence. It is relevant material, important in its impact, though not infallible in its verdict. But the Court is not barred from trying the case because the certificate is not conclusive. Nevertheless, the Magistrate shall not brush aside what another tribunal has for similar purpose, found. Maybe, even a rebuttable presumption arises in favour of the statutory certificate but could be negatived by positive evidence. An act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognised or affirmed.*
>
> *15. I am not persuaded that once a certificate under the Cinematograph Act is issued the Penal Code, pro tanto, will hang limp. The court will examine the film and Judge whether its public display, in the given time and clime, so breaches public morals or depraves basic decency as to offend the penal provisions."*

Later, in *State of Orissa v. Bhagaban Barik,* (1987) 2 SCC 498 it was held that:

> *"Under this section, although an act may not be justified by law, yet if it is done under a mistake of fact, in the belief in good faith that it is justified by law it will not be an offence. Such cases are not uncommon where the courts in the facts and circumstances of the particular case have exonerated the accused under Section 79 on the ground of his having acted in good faith under the belief, owing to a mistake of fact that he was justified in doing the act which constituted an offence. As laid down in Section 52 of the Indian Penal Code, nothing is said to be done or believed in good faith which is done or believed without due care and attention. The question of good faith must be*

considered with reference to the position of the accused and the circumstances under which he acted. "Good faith" requires not logical infallibility but due care and attention. The question of good faith is always a question of fact to be determined in accordance with the proved facts and circumstances of each case. "

6.3.5 As this court sees the provision of Section 79, the crucial concept is good faith, and the nature of the action which is sought to be protected. The discussion in the previous section of this judgment shows that on two occasions – i.e. 06.12.1979, and later, in August, 1980, the licensing authority had determined that location of extra seats would be compromising safety norms. Indeed the mandate of the Division Bench was to see that safety norms were complied with. The Accused Nos 1 and 2 insisted upon placement of the seats; also, there is not a single piece of evidence justifying the location of the DVB transformer. Neither the licensing authorities nor MCD granted permission for that. Furthermore, the blockage of right side exit and violation of the gangway rule as well as other DCR 1953 norms cannot be beyond the scrutiny of the Court, just because statutory authorities, mechanically certified compliance. Many of those norms mandated compliance every day, each show. All these clearly reveal that the Accused Nos 1 and 2 did not take the requisite standard of "care and attention" so necessary, for application of Section 79, IPC.

6.3.6 The role of employees and public officials who granted such certificates and officials is under scrutiny; many of them have been charged of being offenders. It is therefore, held that such approvals, no objection letters or certificates, etc cannot justify the appellants

action; the Court has to independently examine whether their acts and omission are culpable, and whether they are guilty of the offences charged.

6.4 *Discussion on Disputed documents*

6.4.1 The next question to be considered and decided is the admissibility of documents contained in files, exhibited during the later stages of the trial. The Appellant Gopal Ansal contends that when the occasion to have specific documents (contained in these files) had arisen, the prosecution did not have them exhibited. However, at a later stage of the trial the prosecution had them exhibited; they were never proved. The argument particularly is that in relation to most documents, which are part of files, the prosecution got specific parts or documents (contained in these files) exhibited; however, in relation to an entire class of documents or parts of these files, they were collectively marked. To emphasize the point, Appellants illustrate that D-93 to D-102 referred to specific pages or documents in such files, in the charge sheet; however, the entire files were exhibited. Thus, objection is taken to the exhibition of Ex PW-69AA to Ex. PW-69/FF; Ex. 108/ Z-1 to Ex. 108/Z-3; Ex. 108/ZZ-1 to 108/ZZ- 34. The contention also is that those who could have spoken about these documents, either were not asked to prove them or were not produced for examination. Reliance is placed upon the decision of the Supreme Court, reported as *Narbada Devi Gupta v. Birendra Kumar Jaiswal*,(2003) 8 SCC 745, to contend that marking documents as exhibits and their proof are two different legal concepts. Reference is made to Section 66 of the Evidence Act.

6.4.2 In reply, the CBI contends that the argument about admissibility is unfounded. Reference is made to the trial court's order, dated 23-12-2004. It was submitted that some documents, including files, seized during investigation, were not formally exhibited during deposition of witnesses, though they were part of the charge sheet, and also shown as marked. When, during examination of the accused under Section 313, questions relating to those documents were put, the accused Sushil Ansal objected. Consequently, an application to have the disputed documents marked, was filed; the same was disposed on 23-12-2004. The trial court directed the documents to be exhibited. This order was carried in revision, by accused Sushil Ansal, before this court, in Cr. MC. 92/05. That was disposed of, by this court, on 1-3-2005, reserving liberty to the petitioner to raise the plea of non-admissibility and non-proof of such disputed documents, at the final stage during the trial. It was submitted that the objection was never canvassed by Gopal Ansal, or even by Sushil Ansal, at the later stage of the trial. Counsel pointed out that the objections articulated in the grounds, urged in their appeals pertain only to one set of documents, i.e Ex. PW-98/C and Ex. 98/X-1 to Ex. 98/X-6 series; there is no mention of any objections to other documents, which were exhibited as a result of the order of the trial court, dated 23-12-2004. Having chosen not to do so, the appellant accused cannot be permitted now to object to those documents, as they would irreparably prejudice the prosecution. Counsel also submitted that the documents, which are being objected to, are official records, seized from offices of statutory authorities, such as the licensing department, the MCD, the Delhi Fire Service and so on; they also include the

documents and files seized by the Delhi Crime Branch, and later seized during course of investigation, by the CBI. They are admissible, by virtue of Sections 35 and 74 of the Evidence Act, 1872. Learned counsel relied on *Banamali Das v. Rajendra Chandra Mardaraj Harichandan,* (1976) 1 SCC 54 and *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple,*(2003) 8 SCC 752.

6.4.3 Before ruling on the issue, it would be necessary to notice the nature of the documents, marked by the trial court's order, of December, 2004:

(a) D-78 contained four plans submitted with a report, concerning the fire incident. PW-39, in the course of evidence, deposed that the entire file, containing 13 sheets, including 6 copies of building plan, pertaining to Upahaar, to the CBI, through seizure memo Ex. PW-39/G. These documents were later marked as Ex. PW-39/AA to Ex. PW-39/DD.

(b) D-93 to D-98 were files seized from the DCP Licensing; they were described by PW-69, in pages 736-737 by him, during his deposition. He also mentioned the nature of each file, and that they were maintained in the course of official work. However, they were not formally exhibited at that time. He also identified the seizure memo, by which these documents were taken over, i.e Ex. PW-69/E. The trial court directed the exhibition of these documents as Ex. PW-69/AA to Ex. PW-69/FF;

(c) Files D-78 which was marked under the trial court's order, as noticed earlier, was also spoken to by PW-106, who mentioned about the date of seizure of the file. He also mentioned about seizure of other files, and, in his deposition, recorded between pages 1057 and 1059 (of the trial court record) described what was seized, and when; these documents and details of files were seized from the office of the MCD, pertaining to Green Park Theatres (P) Ltd. they were later marked, under orders of court, as PW-106/A, PW-106/A-1; PW-106/A-2 and PW-106/A-3;

(d) Ex. PW-108/Z-1 and Ex. PW-108/Z-2 are copies of DD entries, recorded by the Delhi Police, Crime Branch; they were seized by PW-108, by memo Ex. 78/F. He deposed about this in the trial court (Ref. trial court page no. 1173). Ex. PW-108/Z-3 is a copy of the parking contract seized by Inspector Sat Singh by Ex. PW-56/C. Ex. PW-108/Z-4 and Ex. PW-108/Z-5 are certain letters written to DVB, including PW-48 (the witness PW-108) speaks about these in page 1176 of the trial court's record. Ex. PW-108/Z-6 is a letter written to Chairman, DVB, by the Crime Branch on 15-7-1997, regarding certain queries about the DVB transformer. This too, has been deposed about, in page 1177 of the evidence.

(e) PW-78/E was a seizure cum production memo, in respect of negatives of photographs, and their corresponding positives as well as a video graph,

concerning the cinema building. PW-78 deposed having handed over these to the CBI, on 27-7-1997. PW-108 deposed having taken them over, from PW-78; these were exhibited as Ex. PW-108/ZZ-1 to Ex. PW-108/ZZ-69;

(f) Ex. PW-110/A, and Ex. PW-110/A-1 to PW-110/A-40 were correspondence with various Government departments. They were mentioned by PW-69, when he spoke about the files Ex. PW-69/A and Ex. PW-69/B (page 735 of the trial court record). It was also mentioned that these were official files being maintained in the licensing and Police Commissioner's department, in the normal course.

6.4.4 The relevant provisions of the Evidence Act are extracted below:

35. RELEVANCY OF ENTRY IN PUBLIC RECORD OR AN ELECTRONIC RECORD MADE IN PERFORMANCE OF DUTY.

An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact.

"74. PUBLIC DOCUMENTS

The following documents are public documents:-
(1) Documents forming the acts, or records of the Acts –
(i) of the sovereign authority.
(ii) of official bodies and tribunals, and
(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;
(2) Public records kept in any State of private documents."

75 PRIVATE DOCUMENTS

All other documents are private documents"

6.4.5 In *Banamali Das (supra)* a check memo of election results, required to be maintained by the officer-in-charge of the counting table was held to be a document forming record of the acts of a public officer and therefore, its certified copy furnished by the Collector (in whose custody the document was kept) was held admissible in evidence in proof of the contents of the original document. The court cited Section 74 of the Evidence Act. *P.C. Purushothama Reddiar v. S. Perumal,* (1972) 1 SCC 9 was also a case concerning an election dispute. The court had to decide whether a party arranged election meetings on certain dates; police reports were sought to be relied on. Commenting upon Section 35 of the Evidence Act, and the status of such documents, the court held that*:*

> *"The issue before the Court is whether the respondent had arranged certain election meetings on certain dates. The police reports in question are extremely relevant to establish that fact. Hence they come within the ambit of the 1st part of Section 35 of the Evidence Act. In this connection we would like to refer to the decision of the Madras High Court in Navaneetha Krishna Thevar v. Ramaswami Pandia Thelavar. Therein the learned Judges observed thus:*
>
> *"As however the cases may not stop here, we think it right to allow the petitioners in Civil Miscellaneous Petitions Nos. 845 and 1655 of 1915 for the admission of certain documents rejected by the Subordinate Judge, namely: (1) the decree of the Zilah Court of Tinnevelly, dated May 31, 1859, in Original Suit No. 4 of 1859, (2) the Takid of the Collector to the Muzumdar on the death of the Raja in 1850, (3) the reply of the Muzumdar and (4) the Collector's Takid in 1853 on the complaint of the Zamindar's widow as to the conduct of Maruthappa Thevar who according to the plainiff's case was the father of Gananapurani's mother. They will accordingly be marked as Exhibits XXXIV, XXXV, XXXVI and XXXVII respectively and incorporated in*

the record. The learned Advocate-General did not support the exclusion of the last three on the ground that the copies of correspondence kept in the Collector's and Taluk offices were not signed but contended that they were not admissible under Section 35 of the Indian Evidence Act. We think, however, that copies of actual letters made in registers of official correspondence kept for reference and record are admissible under Section 35 as reports and records of acts done by public officers in the course of their official duty and of statements made to them, and that in the words of Their Lordships in Rajah Muttu Ramalinga Setupati v. Periyanayagam Pillai they are entitled to great consideration in so far as they supply information of material facts and also in so far as they are relevant to the conduct and acts of the parties in relation to the proceedings of Government founded upon them."

24. *We are in agreement with the view taken by the Madras High Court in that case.*

25. *Now coming to the value to be attached to the evidence afforded by those reports, we may usefully refer to the decision of the Judicial Committee in Arjuno Naiko v. Modonomohono Naiko (*AIR 1940 PC 153). *In that case a person brought a suit for establishing that he was the adopted son of a dismissed Sirdar and as such entitled to succeed to the Sirdarship. In evidence documents coming from official sources recording statements as to adoption made to the officials in the locality not merely by the plaintiff himself in the presence of others but also by other member and by the dismissed Sirdar himself were produced. These statements were made at a time when no disputes had arisen and were made in connection with a matter of local interest viz. the appointment of a new Sirdar. The Judicial Committee held that the documents carried greatest possible weight and could not be dismissed as mere self-assertions."*

More recently, in *FCI v. Assam State Coop. Marketing & Consumer Federation Ltd*.,(2004) 12 SCC 360, the Supreme Court had to decide whether documents forming part of a series of transactions could be examined, through the production of letters, maintained in official files. The court ruled that:

"The fact remains that both these letters formed part of the official record of the plaintiff and are placed as pieces or links found in the chain of long correspondence entered into between the parties. According to Section 35 of the Evidence Act, an entry in any public or other official record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty is itself a relevant fact. Section 39 of the Evidence Act makes a reference to any statement of which evidence is given forming part of a connected series of letters or papers."

6.4.6 If anybody wants to prove the contents of the documents other than the public documents it should be proved by through the author of the documents viz. person who has written that document. The above decisions, in the opinion of the court establish that if documents are produced from the official custody, and the person deposing to it, is able to establish that they were maintained in the normal course, and further as in this case, deposes that at the time of seizure, the contents of the documents were also detailed (as in terms of number of pages etc), the requirements of Sections 35 and 74 should be deemed satisfied. In this case, the documents in question are either part of official files, or the files themselves, seized from officials, maintaining them in the normal course of duties. Many documents forming part of those and other files were also tendered in evidence. During the cross examination, some of those were actually exhibited, as specific documents. In the circumstances, the argument that they were not proved specifically, cannot be accepted. In *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple,*(2003) 8 SCC 752 the Supreme Court held that*:*

"Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that

the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court.

6.4.7 In this case, accused Gopal Ansal did not object to the marking of the evidence; the objection was raised by Sushil Ansal. Neither of them articulated the objections during the final arguments before the trial court; there is no ground urging this aspect, in the appeals. On the other hand, the written submissions filed by them in the courts below have in many

instances, pointed to and relied on some of the documents forming part of such files. Particularly, they relied on letters in Ex. PW-69/AA. The court is also of the opinion that PW-38, from whom PW-38/A and PW-38/B were seized, as well as PW-69, from whom Ex. PW-69/AA to Ex.PW- 69/FF were seized, were natural custodians of the files produced before the court. PW-106/AA-1 to PW-106/AA-3 were also MCD files. In many instances, the documents which form part of the disputed files, are relatable to the undisputed documents. For instance, the show cause notice, dated 6-12-1979 by the licensing department, asking for removal of 43 seats, is part of Ex. PW-69/AA; though the appellant disputes this, the admitted documents Ex. PW-100/AA-2, dated 13-2-1979 and Ex. PW-29/DR (issued by the appellants) refer to the show cause notice. Similarly, the disputed document, Ex. PW-110/AA-7 dated 29-7-1980 seeks for installation of additional seats; this is corroborated by admitted documents Ex. PW-29/DS and Ex. PW-29/DV. Ex. PW-69/C is the inspection note, dated 22-12-1979. This is corroborated by Ex. PW-29/DR, an admitted document.

6.4.8 In view of the above discussion, the objection as to the mode of exhibiting documents, raised by Gopal Ansal is held to be unmerited. This, however, is not dispositive of the effect of the documents; they would be considered separately.

6.5 *Local inspection by the trial court*

6.5.1 The learned trial judge had inspected the premises during the course of the trial, on 19-8-2006. The accused, had applied to accompany the judge; their applications were turned down. The judge's inspection notes have been fully quoted in the judgment. Later, in the course of the judgment, the court stated that:

> *"In the inspection of Uphaar cinema, the following observations have been recorded by me in this regard :-*
>
> *" There were 12 R S Joists near the iron collapsible channel gate having lock inside, 14 iron pipes, rusted cycle, wooden box having mark of car parking, dustbin, iron table were lying. Two wooden charlies used for construction purpose were also lying on the floor, six light bulbs were also affixed on the wall at right hand side. Seventy garders were also affixed on the wall at the height of approximately eight feet from the ground. "*
> *It is clearly established from the above Inspection Note and from the observations made that with the help of R S Joists, wooden floor was in existence covering area of 2890 Sq. Feet and offices were there. The wooden planks increased the fire that broke out in Uphaar cinema resulting in the smoke which caused the death of the patrons. Learned counsel for accused has not given any explanation in this regard. The observations of experts are supported by the spot inspection at site. Learned counsel submitted that such R S Joists and wooden structure upon the same, even for the sake of arguments were existing, did not cause any hindrance in the egress and ingress of the patrons."*

6.5.2 It was urged that such judge's notes and inspection cannot take the place of evidence or proof, but is only to appreciate the position at the spot. Citing *Keisam Kumar Singh v. State of Manipur,* (1985) 3 SCC 676, and *Pritam Singh* v. *State of Punjab* AIR 1956 SC 415, it was argued that the court converted itself into a witness in order to draw full support to the prosecution case by what she may have seen.

6.5.3 In *Keisam Kumar Singh (supra)* the Supreme Court, citing *Pritam Singh,* held that:

> *"Lastly, the learned Sessions Judge relied on the local inspection made by him. Here, the High Court rightly pointed out that the learned Sessions Judge had committed a serious error of law. Normally, a court is entitled to make a local inspection and even if such an inspection is made, it can never take the place of evidence or proof but is really meant for appreciating the position at the spot. The Sessions Judge seems to have converted himself into a witness in order to draw full support to the defence case by what he may have seen.*
>
> *14. This Court in Pritam Singh v. State of Punjab[1] observed thus: (p. 424, col. 1)*
>
> *"A Magistrate is certainly not entitled to allow his view or observation to take the place of evidence because such view or observation of his cannot be tested by cross-examination and the accused would certainly not be in a position to furnish any explanation in regard to the same."*

Recently, in *State of H.P. v. Mast Ram*,(2004) 8 SCC 660, the Supreme Court again had occasion to consider the scope of Section 310, which enables a judge to conduct spot inspection for ascertaining facts. The court observed that:

> *"That apart, the local inspection envisaged under Section 310 CrPC is for the purpose of properly appreciating the evidence already recorded during the trial. Memorandum of spot inspection recorded by the trial Judge has to be appreciated in conjunction with the evidence already recorded. Any omission and/or commission in the memorandum recorded by the trial Judge by itself would not constitute material irregularity, which would vitiate the prosecution case. In our view, it is difficult to accept the reasoning recorded by the High Court in this regard."*

6.5.4 Applying the principles indicated in the authorities, it is clear that the judge's inspection of the spot is to appreciate the evidence already recorded during the trial. While the circumstance that the court inspected the spot cannot be a vitiating factor, particularly since such inspection was preceded by this court's direction, the fact that notes recorded

during such inspection were used as corroborative materials has coloured the approach of the judge, to that extent. That RS Joists, a series of metal beams existed, on the date of the accident, and the date of inspection, is a matter of record. No doubt, the prosecution had urged that wooden planks existed on those "Joists"; its case also was that the planks had burnt during the fire. However, the learned judge's conclusion, extracted below, based on the inspection, is absolutely unfounded.

> *"It is clearly established from the above Inspection Note and from the observations made that with the help of R S Joists, wooden floor was in existence covering area of 2890 Sq. Feet and offices were there. The wooden planks increased the fire that broke out in Uphaar cinema resulting in the smoke which caused the death of the patrons…"*

Such an inference could not have been drawn merely on the basis of the spot inspection, which at best indicated that RS Joists were in existence. The following were the subsequent conclusions drawn by the judge:

> *"Learned counsel is correct while making submissions that wooden structure (Al though, he denies wooden structure) did not cause any obstruction in the egress and ingress of patrons, I find, smoke caused by wooden structure did cause obstruction to the patrons in the balcony by aiding fire that broke out in Uphaar Cinema. The submission of counsel for accused that wooden planks have already been removed as has been noted in the report of June, 1983 is not correct in face of the report Ex. PW 29/A and Ex. PW 2/A and also the inspection carried out by the Court on19.8.2006. The accused persons in order to cheat the authorities and to get the favour of the authorities, removed the wooden planks and inspection was carried out second time and re-installed the same after the report of June, 1983 and after second inspection was procured. The authorities of Uphaar Cinema had malafide intention in not removing the R S Joists simultaneously alongwith the wooden planks.I find, the wooden planks either remained there at the time of second inspection was conducted or if the report is true and not maneuvered, the wooden planks were re-installed. It is as such a definite finding has been arrived at in the*

report Ex. PW 29/A and also Ex. PW 2/A as well as the inspection of the court." (Emphasis supplied)

6.5.5 The above conclusions were utterly unfounded; the inspection notes do not indicate existence of wooden planks. It is not known how the trial court was convinced that the cinema management *mala fide* removed the planks at the time of inspection, and re-installed them, and that they existed on the date of the fire incident. For the above reasons, it is held that the judge's inspection notes, to the above extent, could not have been relied on to record findings, or as corroborating the position of any party, to the litigation. It could have been at best an endeavour to appreciate the facts, in the light of the evidence recorded.

VII. FACTUAL ANALYSIS & FINDINGS

This court proposes to analyze the materials as well as the judgment, in relation to each factual finding.

The Transformer and the charge of its being "allowed" to be installed by Accused No. 1 and 2

7.1 The evidence led by the prosecution here was that Ex. PW-15/Y-3, the plan sanctioned by MCD did not enable the installation of an additional DVB transformer of 1000 KVA, capacity or any other capacity, as was existing at the time of the accident. It was contended that this showed that installation of the transformer was contrary to the sanctioned plan, and therefore illegal. It was also contended that installation of a 1000 KVA transformer

in 1989 was contrary to the sanction plan and contrary to Municipal Building Bye Laws. Counsel on behalf of accused no. 1 and 2 contended that they were compelled by the DESU/ DVB authorities to permit the authorities to install their transformer and were threatened that they would not permit the cinema to install its transformer, if their transformer was not installed in the ground floor. The cinema management, or Accused Sushil and Gopal Ansal, could not be blamed for installation of the second transformer and no criminal liability on account of such installation of the second transformer, of the DVB, could be attached to them.

7.2 The materials on record, i.e the letters and correspondence between the Uphaar Cinema management and DVB, on the one hand as well as the sanctioned plans of the cinema on the other, are relevant for the present discussion. The trial court noted that 16 plans were produced; (Ex.PW15/Y1 to Y/16). The relevant plan concerning the transformer was Ex.PW15-Y/3. In terms of this plan, there were three adjacent rooms, in relation to the transformer. The dimensions of the first room are 20 x 10 feet, (the LT room) those of the middle room were 20 x 10 feet, (for installation of the transformer). The third room's dimensions were 20 x 10 feet, which was the HT room. These were described in the plan as the "HT room", "LT room" and "Transformer". The transformer room is shown in the middle, flanked on either side by the LT and HT room. The sanctioned plan Ex.PW15-Y/3 indicated that electricity was to be fed into the HT room; after conversion from high to low

potential, it was to be transmitted to the LT room. It was then to feed the Uphaar cinema. The power source, feeding the HT room was from outside; the transformer was to step down the high density current into low density current. The third room was meant for low density current wires from which power was to be supplied. The installation of DVB transformer, is nowhere reflected in any of the plans submitted by the Uphaar cinema, or the first two accused. All the plans on record continue to show that only one transformer, that of Uphaar, was being installed. The installation of the DVB transformer was without the sanction of the Municipal Corporation of Delhi, which was subsequently also never notified of this change. The result was that the DVB/ DESU transformer was installed instead of the LT room, as shown in the sanctioned plan. The HT wires of both transformer were installed in the room originally meant for LT room. This was contrary to the plan Ex.PW15-Y/3, sanctioned by MCD.

7.3 The trial court relied on Bureau of Indian Standard 10028, Part II, 1981, which prescribed standards for installation of transformers. They may be extracted below:

> *"3.3 Compliance with Indian Electricity Rules and Other Regulations.*
>
> *3.3.1All electrical installations shall comply with the requirements of the Indian Electricity Act and Rules made thereunder and with any other regulations that may be applicable, such as those made under Factories Act, 1948 and Fire Insurance Act. The following rules of Indian Electricity Rules, 1956, are particularly applicable: 35, 45, 50, 51, 59, 61, 62, 63, 64, 65, 67, 68,69,114.*

3.6.2 If two ore more transformers are installed side by side, they shall be separated by fire-separation walls. Fire separation walls are deemed to be adequate from fire-safety point of view, even if oil capacity of individual transformers do not exceed 2,000 litres, and total capacity of all transformers installed side by side exceeds 2,000 litres.

3.6.3 The capacity of the oil soak pit shall be such that to soak the entire oil content of the transformer, it is intended for individual soak pits for each transformer (wherever necessary) with capacity as above or a common soak pit to contain the entire oil content of the biggest of the transformers shall be adequate.

3.6.4 Soak pits shall be designed in such a way to provide for safe draining of liquids to soak pits.

4.5 Isolation of Equipment.

4.5.1 Means should be provided for the complete isolation of every transformer from the supply and these should be so placed as to be readily accessible from the position in which danger may arise to enable the supply to such transformers to be cut off immediately. In making provision for isolation, due regard should be paid to the necessity for isolating all control, pilot and interlocking circuits, whether these are derived from the main source of supply or independently. If it is not practicable to carry out complete isolation with a single device, clear and concise instructions should be affixed to the apparatus in a permanent manner setting out the procedure to be adopted to secure complete isolation.

7.3.1 Indoor Sites.

7.3.1.1 The most important thing to be ensured with transformer installed indoors is proper ventilation that is, free moment of air round all the four sides. The level of the transformer base should be higher than the highest floor and storm water level of that area.

7.3.1.2 The transformers should be kept well away from the wall. The minimum recommended spacing between the walls of the transformer periphery from the point of proper ventilation have been shown in Figure 2. However, the actual spacing may be different than those given in Figure 2, depending on the circumstances, such as access to the accessories.

7.3.1.4 For indoor installations the air inlets and outlets shall be of adequate sizes and so placed as to ensure proper air circulation for the efficient cooling of the transformers. The inlets should preferable be as near the floor as possible and the outlets as high as the building allows to enable the heated air to escape readily and be replaced by cool air.

7.6 Cabling

7.6.1 Cable trenches inside sub-stations and switch stations containing cables shall be filled with sand, pebbles or similar non-inflammable materials, or completely covered with non-inflammable slabs. In many installations, it may be advisable, for reasons of ease of maintenance to locate equipment centrally with cable galleries serving the purpose of cable
galleries serving the purpose of cable trenches.

7.6.2 Cables may also be carried along-with the walls clamped on the vertical supports at suitable intervals depending on the cable sizes. The cables, when arranged in a verticle plane, should run clear off the walls. Many types of special clamps for this purpose are now available. Where a large number of cables have to be carried and it is not desirable for some reason to have a portion of the wall face covered with cables, these may be run in cable trays or racks and the spacing between them should be 150mm or more depending on the cable sizes. The cables should be laid in a single layer and the routings should be preplanned so that cross-overs are kept to minimum.The trays may be made from suitable materials such as galvanized iron or aluminium sheets or expanded metal. The expanded metal affords better ventilation for the cable. In view of economy and compactness, control and power cables are laid in the same trench; care shall be taken to segregate them in separate racks, with the control cables effectively screened. DC control cables, ac power circuits and instrument transformer circuits shall be segregated from one another.

7.6.3 The cables should not be exposed to heat from other equipment. The cable trenches should be suitably sloped and arrangements should be made for draining them or preventing them from getting filled with water.

7.9 Precautions against Risk of Fire :
7.9.1 In order to limit the spread of fire in the event of ignition, insulating oil, oil filled switchgear and transformer units should be segregated in groups

of moderate capacity; where the size and importance of the plant warrants it, this may be achieved by segregation in separate enclosures. Alternatively fire resisting barriers may be provided between transformers or sections of switchgear."

The other provision considered as essential by the trial court was clause K-8.4 (b) of the Building Bye Laws 1983 which is as follows:-

"The transformer shall be protected by an automatic high pressure water spray or a foam sprinkler system. When housed at ground floor level it/they shall be cut off from the other portion of premises by Fire Resisting walls of 4 hours fire resistance.
They shall not be housed on upper floors."

7.4 A look at the sanctioned plan, Ex. PW-15/Y3 reveals that there is no approval for placement of two transformers. This was also spoken to by PW-2, in his deposition. As to the other violations found by the trial court, PW-24 deposed to the lack of cable trenches, the haphazard manner in which cables were lying in the transformer room floor, lack of minimum clearance in the transformer room, and lack of any arrangement for draining out the transformer oil.

7.5 The documentary evidence as regards installation of DVB transformer is found in Ex. PW-100/M. These are discussed hereafter. The first accused applied for sanction to install a transformer on 29-7-1972; the DVB responded, on 14-9-1972, saying that:

"since the total load exceeds 100 KW the supply is to be required to be availed on HT 11KV. You would be required to arrange for your own transformer of suitable capacity and will have to provide a suitable built up accommodation for housing our S/stn (sic sub-station) equipment"

7.6 The matter was considered by DVB, evident from letters dated 22.9.1972, 21.10.72, 13.11.72, 22.11.72, 28.11.72, 8.1.73, 12.1.73, 19.1.73, 24.1.73, 27.1.1973, 1.2.1973, 5.2.73, and 6.2.73, 20.2.73 which are part of Ex. PW-100/M. The same file contains a letter of the first accused, dated 2-2-1973, agreeing for the installation of the DVB transformer, in the following manner:

> *"..... This is to confirm the discussions the undersigned had with you yesterday when we agreed to give you two rooms measuring 10'-6" x 30' and 10'-g" x 15' for your transformer and HT and LT panels. This accommodation we will give you at a nominal rent of Rs. 11 per year. We further undertake to execute the civil maintainence work.....It is therefore, requested to kindly get the transformer and HT and LT Panels and laying of necessary cables expedited so that the necessary connection can be given in time.*

On 20-2-1973, in another letter, to the DVB, the said Accused Sushil Ansal, stated that:

> *".....Though we are installing our own transformer for our requirements, but during emergency you will give us current from your transformer on L.T. Supply for the sub-station to be installed at Uphaar cinema. We are giving you the space on the above understanding....."*

7.7 In this background, on 19.10.1973, an agreement was entered into between DESU and M/s Green Park Theaters Associated (P) Ltd, executed on its behalf by accused Gopal Ansal (part of Ex. PW 100/L) By that agreement, DESU was permitted space to install a transformer in the car parking area of the building to be used as substation, at Rs.11/- per year as rent. The DESU transformer of 750 KVA was energized on 6.9.75 in building.

7.8 Sushil and Gopal Ansal contend that the installation of the DVB transformer has to be seen in the background of the situation of the concerned parties. On the one hand, the DVB/ DESU was a statutory body, empowered with sweeping eminent domain powers to coerce and compel a private party, ie the GPT, to accede to its demands. On the other, the GPT, being a fledgling enterprise, was dependant on DVB/ DESU for electricity connection, and could not resist the latter's demands, since it was a monopoly. Reliance was placed on Section 42 of the Electricity Supply Act, which empowers the Board, for the purpose of placing wires, poles, wall brackets, stays apparatus and appliances for transmission and distribution of electricity, and all the powers which the Indian Telegraph Act, 1885 confers, under Section 15 of that enactment, for entering into immovable property and using it for the purpose of placing telegraph poles, etc, subject to payment of compensation. Sections 432 and 433 of the Delhi Municipal Corporation Act, were also relied upon to show that the DESU, a unit of MCD at the relevant time, enjoyed coercive powers to break into buildings and premises.

7.9 A reading of the relevant correspondence shows that GPT applied for permission to install a transformer on 29-7-1972; the assessment of the connected load was 250 KW. The DVB wrote on 14-9-1972, asking for space to install its substation. The letter of GPT dated 22-12-1972 acknowledges the DVB letter of 14-9-1972; it mentions about modalities for installation of transformer for the Uphaar cinema hall. However, it does not express any

reservation about the request of DVB for space to house its transformer. The subsequent correspondence reveals that the application of GPT, in the prescribed format, had some defect; it was asked to rectify it, and did so. Also, DVB's assessment of space for its transformer, underwent a change. After these letters, the two letters of accused Sushil Ansal, dated 2-2-1973 and 20-2-1973, unambiguously show consent to DESU/ DVB to install their transformer, at Rs. 11/- per annum.

7.10 According to Black's Law Dictionary, (Seventh Edition)"coercion" means

> *"compulsion by physical force or threat of physical force; threatening to commit a criminal act against that part; threatening to expose a secret;…improper use of economic power to compel another to submit to the wishes of one who wields it…"*

The Concise Oxford English Dictionary, 10th Edition, on the other hand, says that coercion is to:

> *"Persuade to do something by using force or threat…"*

The contemporaneous correspondence and letters written by the accused, on behalf of GPT, nowhere suggests that any element of threat or use of force, or use of economic power was held out. What is evident is that there was an anxiety to start operations, and the cinema management agreed, without reservations, to the DVB's request to install its transformer. There was no sanction for this, under the plan. No attempt to secure the permission of MCD was made. The question of the accused being coerced does not arise; they agreed and allowed

the installation of the transformer, without intimating this important change to the MCD, or even the licensing authorities. The accused willingly went along with the proposal, unmindful of the higher risk this departure from norms would lead to.

7.11 Another important aspect which has to be noticed, in relation to installation of transformers is that according to the record, the Uphaar transformer, originally of 250 KVA capacity, was approved for 500 KVA capacity; such transformer was installed. However, many parts of the building were let out and used for commercial purposes. The electricity connection to these establishments were not provided by the Uphaar transformer; their needs were catered to by the DVB transformer. This has been proved by Ex.PW-100/P-1 to Ex.100/P-6, which are requests to the DESU/DVB from the Uphaar establishment at different points in time, to grant electricity connections. This clearly proves that the Uphaar establishment was a beneficiary of the DVB transformer; some parts of the building dependent on that transformer, for its power and electricity needs. Moreover, Ex PW 48/B, a letter dated 9.7.97, lists the electricity connections, sanctioned and fed from the DVB transformer installed at Upharr Cinema. There were five in number, with a total sanctioned laod of 16.96 KW. In the context of these facts, the Uphaar cinema halls and its owners or occupiers were under a duty to ensure that the installation was in accordance with law. Even as owners of the building, they had to ensure that the DVB transformer at all times did not pose any hazard or risk for the safety of the patrons and viewers.

7.12 In the questions put to the first two accused, the various reports of experts, as well as the sanctioned plans, and the plans of the building prepared after the incident (particularly Ex. 2/A-11 and A-19) and the report of R.N. Gupta (Ex. PW-2) were put to both accused. In view of these, it is held that there is no infirmity in the findings by the trial court that the transformer was allowed to be installed without authority of law; it is also held that the Appellants have not established that the DVB transformers were installed due to any compulsion, economic or otherwise.

Parking and management of parking

7.13 In relation to the accident, the parking of vehicles in the ground floor and its management assumes significance. Ex. PW 2/A11 is parking lay out plan of the ground floor. In this plan, the number of cars permitted to be parked within the building is 15. 35 cars were permitted to be parked outside. PW 56 R K Sethi was the parking contractor for the Uphaar Cinema on ground floor for cars and in the basement for two wheel vehicles. He was granted contract for parking by a letter dated 1.4.88 from Gopal Ansal Ex. PW56/A. He deposed that when on 13/6/97 the fire took place in Uphaar Cinema transformer, he reached Uphaar cinema and found that his employees were taking out cars and scooters from the parking area; he found lot of smoke and heat and also found 8/10 cars in a burnt condition.

He proved Ex. PW 56/B containing the details of tokens issued to cars parked on 13.6.97 which was seized by memo Ex. PW 56/C. A total of 18 cars were shown to be parked; the witness also deposed that in addition, about 10 cars, belonging to staff members were parked. The material part of the parking contract, Ex. PW-56/A, relevant for the present purpose, is as follows:

> *"..Shri R K Sethi _*
> *.....*
> *With reference to the discussion had with you, we are pleased to renew and re-allot to you, with effect from 1.4.88, contract for running both the covered car parking and cycle/scooter stand at the abovementioned premises on the following terms and conditions:*
> *1. .....*
> *2.*
> *3.*
> *Yours faithfully,*
> *_ Sd Gopal Ansal*
> *Director"*

7.14 Ex.P-56/A does not contain any direction or condition to the parking contractor to ensure that vehicles were to be parked in conformity with the plan sanctioned by the authorities. This aspect is important, because by the time this agreement was entered into by the accused, it was known that there were two electrical transformers in that parking lot. There was need to ensure a higher degree of care, at all times, to conform to the parking plan, avoid congestion in parking. Crucially, it was necessary that the parking contractor, as well as the owner and occupier of the building, ensured that sufficient space was available for

vehicles to leave the building, and also that the 16' parking aisle mandated by the parking sanctioned plan was kept for free movement of vehicles, at all times.

7.15 As far as oral testimony goes, in cross examination, PW-24 stated that a car had been parked one and a half metres away from the transformer room; PW-27, the fireman, Bansilal Meena, mentions about flames in the parking area, when he went, to quell the fire. Ex. PW-35/A, the report of Shri K.V. Singh, also mentions about existence of burnt vehicles in the parking area. PW-49/A, the report of the Chief Fire Officer, R.C. Sharma, mentions about existence of cars 1 meter away from the transformer. He mentions, significantly that no parking lines existed separating the areas; there were no separation line near the transformer, for parking of vehicles. The fire, according to him, was confined to the DVB transformer room and a number of cars and scooters in the parking area. PW-56, the parking contractor deposed that cars were parked at a distance of 3-4 feet from the transformer room and that one Contessa car was parked just touching the transformer room; but he deposed that according to his employee, that vehicle was forcibly parked by its owner there. He also stated that 18 car parking tokens were issued; he stated that a further 8-10 cars were parked in the ground floor, belonging to the staff. This was corroborated by Ex. PW. 56/B (seized by memo PW.56/C dated 31-7-1997) a description of the tokens issued for the show; they mention issuance of 18 tokens at 3-30 PM. The seizure memo dated 7-7-1997, Ex. PW-78/C corroborates this evidence; 16 cars, both in burnt and un-burnt condition were seized on that

date. The photographs PW-61/191, PW-61/208 and PW-61/211 also bear out the fact that several cars were parked in the ground floor; many of them were in burnt condition. These photographs were taken at site, on 29th July, 1997, by Gautam Roy, PW-61, Scientific Assistant, CFSL. Ex. PW-2/A, a report by PW-2, confirms that in the original plan sanctioned by MCD, a 16 feet width passage in front of the transformer was to be left unoccupied/vacant. However, he stated that vehicles were parked on this area, which affected free and smooth movement of vehicles. PW-64 says that the parking lot was affected by fire.

7.16 It was urged on behalf of the first two accused that permitting parking in the building could not be construed as unlawful, as indeed there was sanction for this purpose, in the plans proposed by the cinema, in 1973 and 1974. Reliance was placed on sanctioned plans, which allowed parking of cars in the ground floor of the building, and two wheeler vehicles and cycles in the basement. It was therefore contended that instead of manning the parking, the cinema management decided to hand over this activity to a third party independent contractor, PW-56. The initial contract in this regard was entered into in 1977; it was renewed later in 1988. The said accused No. 1 &2 had no control over PW-56 or the manner in which he performed his job; they could not be therefore held responsible for the so-called improper parking of vehicles, even if it was proved that excess vehicles were parked. Having given the contract to someone, who had functioned responsibly for more than 20 years, it could be reasonably expected by the said accused that there would be no lapse in the manner of performance of such contract by PW-56. It was urged, therefore, that the accused could not

reasonably be expected to foresee that the parking would be operated in a different manner, or negligently.

7.17 This court has considered the materials on record. Ex. PW-56/A and other documents, PW-56/B and Ex. PW-56/C were all put to the Accused Nos. 1 and 2, in questions under Section 313. Accused No. 2, who had signed the letter Ex. PW.56/A, claimed ignorance about the arrangement. Both accused said that they knew about the parking contract, and the existence of cars in the parking lot. The sanctioned plans no doubt indicate that 15 cars could be parked inside the ground floor premises; they also contain clear triangular demarcations for this purpose. These plans (Ex. PW-15/Y-3; PW-102/C-16) show this position. Yet, these plans also reveal that a 16 foot passage had to be maintained, for passage of the vehicles. Furthermore, the number of cars parked on that date were about 28, according to PW-56. He was also not present at the spot, when the fire occurred. He went there later. One of those cars definitely was very near the transformer room. Many of these cars were burnt. The parking contract does not disclose that the contractor was made aware about the conditions imposed in the sanctioned plan, regarding restrictions on the number of cars which could be parked, or about the need to maintain the passage, unimpeded at all times; the arrangement was also not subject to any kind of check or supervision. All these show serious and grave omissions, amounting to illegalities, in the manner of maintenance and supervision of the parking lot. These omissions assume grave overtones, in view of the fact that the existence of two transformers, (one without the sanction of the MCD) were within the knowledge of the

cinema management, which was the occupier and owner of the ground floor. The fact that they chose to "outsource" the parking operation to PW-56 was for their convenience. However, the nature of their responsibility to ensure that the premises were safe, could not be disclaimed. Both under the Cinematograph Act, as well as generally, they had a duty to ensure that vehicles which were parked in the ground floor immediately below the viewing area (first floor) were maintained keeping all safety standards in mind. It is therefore held that the parking lot was managed in a negligent manner, which was a significant contributory to the fire.

Structural Deviations

7.18 The aspect concerning structural deviations has to be closely scrutinized, in view of prosecution case that the deviations were a major contributory to the fire incident, resulting in death of the 59 persons, in the balcony of the cinema hall, and grievous injury to 100 others. It would be necessary at the outset to notice that the question of deviations was addressed both during the trial, as well as in the appeals, by reference to documentary evidence, particularly reports prepared by experts, as well as reports prepared by municipal agencies, at the request of the licensing department i.e. the Delhi Police.

The substance of these reports, contained in two charts, shown below, with reference to the exhibit numbers, outlining the deviations alleged, at the relevant points of time, are extracted below:

7.19 The trial court noticed that the first inspection of the cinema hall took place in 1983. The inspection report outlined certain deviations and irregularities. The document was produced and marked as Ex. PW-17/B. The trial court recorded that:

> *"In 1983, due to fire incident in LPG godown at Shakur Basti and Gopala Tower, Lt. Governor ordered for inspection of all cinema houses. Accordingly, Joint Team of competent authorities inspected Uphaar Cinema on different dates and structural and fire safety deviations were observed in Uphaar Cinema on which the license of Uphaar Cinema was suspended for a period of four days. Against this order, the licensee obtained stay order on 28.6.1983. On account of said Stay Order, the temporary permits were issued and this practice continued till 13.6.97."*

It was noticed, later in the judgment that:

> *"41. On 1.2.1984, accused Sushil Ansal, Chairman of M/s Green Park Theaters Associated Pvt. Ltd requested for renewal of cinema license. Shri S P Aggarwal, Chief Fire Officer cum Deputy Commissioner (Water) inspected Uphaar cinema and pointed out certain deviations. On 16.5.84 Gopal Ansal Director of Green Park Theaters informed that they have substantially rectified the deviations and then again on 31.5.84 Uphaar cinema was inspected and consequentially, permit of Uphaar Cinema was renewed from time to time upto 23.4.85 and subsequently upto 23.4.87 from 23.4.85 to 23.4.87."*

7.20 The accused Sushil and Gopal Ansal contended that the trial court ignored an intervening document, Ex. PW-37/K (Ex. D-84) dated 29th August, 1988. This document was proved by PW-37 Ganesh Das Verma, retired Senior Stenographer, MCD. The document is part of a common report in respect of 13 cinema halls that were inspected. The report, as may be, noticed from the preceding Table-I above, lists out 11 points. It was

contended on behalf of accused No.1&2 that a comparison of Ex.PW-17/B and Ex.PW-37/K would show that whereas the former listed 11 irregularities, the later inspection of 29.8.1998 showed that in August, 1998 itself the wooden plank flooring, (one of the main objections relating to creation of additional floor between stilt floor and floor of the auditorium) had been removed. The second report also showed that the Homeopathic Dispensary was not seen as a fire hazard and that the printing press noticed in Ex.PW17-B as well as combustible material stored in the basement had been removed. Thus the most serious objections about use of the building or existence of structural deviations had been rectified and properly addressed. It was urged that the subsequent report of the Delhi Fire Service dated 12.8.1994 (marked as C-95 by PW 37) had to be read with the previous reports as it concerned itself with the points listed in the earlier documents. It had been contended that those objections were in existence and did not relate to the fire service. However, this report nowhere mentioned that a Homeopathic Dispensary existed or that wooden planks were inserted or put back as contended by the prosecution. It was submitted that the other objections pertaining to occupation of basement, blockage of other areas (excepts as regards occupation of various agencies and offices forming part of staircase and loft) were not even mentioned or even spelt out in this report by the Delhi Fire Service.

7.21 According to the accused Ex.17/D (dated 30.4.96) as well as Ex.16/E (dated 6.5.96) showed that: -

(1) There were no unauthorized wooden planks forming an additional floor in between the stilt floor and the first floor.

(2) M/s East Coast Breweries Ltd. had vacated their office from the basement.

(3) Certain partitions walls were in existence which according to the official agencies needed rectification.

(4) The R.S. Joists (Steel structures) on which wooden planks were placed earlier (but removed) were in existence and had not been removed.

(5) Third floor was let out to various organizations.

(6) The Homeopathic Dispensary said to be unauthorized and a fire hazard was in existence.

(7) The Printing Press noticed in 1983 had been removed as far back as in 1988 and did not find mention in the subsequent inspection of 1994 and two inspections in 1996.

(8) No part of the basement was used to store combustibles material. This had been initially found in 1983 but subsequently rectified and so reflected as rectified in all the four later reports.

(9) An office on a part of the additional floor on the wooden plank was in existence; however, the fire service did not mention that this was a hazard in any report.

(10) The space used by Anil Chopra and Company found in the First Information Report of 1983 had been vacated. This was reflected in all the subsequent reports

Ex. PW 37/K, Ex PW 17/D, Ex PW16/E and the report dated 12.8.94 (marked as C-95 by PW 37).

(11) The space marked for restaurant was let out to a Bank.

7.22 The contentions here were that contemporaneous inspections reflected in the reports produced by the prosecution had shown how progressively the cinema addressed the issue of fire hazard. When it was pointed out that wooden plank based additional floor on R.S. Joists had been created, the planks was immediately removed. So far as the Homeopathic Dispensary was concerned even if it were to be considered a deviation, the prosecution was unable to establish how it contributed to the accident or prevented egress or ingress of the patrons from the cinema at the time of the accident. Similar arguments were made in respect of R.S. Joists; the contention here was that the prosecution could not prove how its existence at a height of above 8 feet from the floor (at ceiling level) in any manner hindered free passage to the patrons. The other contention with regard to the letting out the third floor to various organizations and existence of offices on the top floor for which no permission was required, two arguments were made. It was firstly argued that the permission to let out portions of the building was given as far back as on 12.7.1974 evident from Ex.102/D1. Similarly the partitions of basement were itself not an unlawful act for the reason that it was compoundable deviation if there was proper ventilation in the basement.

7.23 The deposition of PW-39 was relied on in support of this contention. It was urged that four partitions walls in the basement had not co-relationship with the incident and could not have contributed either to the fire or to the spread of smoke which ultimately resulted in death. The evidence of PW-39 was relied on to say that the wooden flooring in the Homeopathic Dispensary *per se* could not be construed as a structural deviation and certainly not a fire hazard. The evidence of the same witness as well as PW/18 was relied on to say that the mere existence of R.S. Joists did not cause any hazard; nor was it unauthorized.

7.24 It was next contended that the Court should give credence to pre-1997 inspection reports which had recorded faithfully what was found before the incident and not the contents of the reports created after the event. The accused contended that there were several internal inconsistencies and glaring contradictions between such reports relied upon by the prosecution i.e. Ex.39/B dated 30.06.1997, Ex. PW-29A dated 2.8.1997 and Ex.PW2/A dated 11.8.1997. The first in the series was a report of PW/39 it listed only six so called irregularities. The report prepared by fairly senior officer of the MCD nowhere reflected that there were any structural deviations of the kind found by the Trial Court. He merely reiterated the existence of partitions walls, R.S. Joists, Homeopathic Dispensary and conversion of restaurant into a Bank. He also determined that the lift well from the ground floor to the basement was converted into an office of Sehgal Carpets and that Manager Room and W.C. on the ground floor had been converted into verandah. These surely could not be

considered structural deviations and certainly not deviations of such a serious nature as could have contributed to the fire, spread of smoke or aggravated the accident and ultimately the death so as to fasten any kind of liability on the accused.

7.25 As regards the other two reports, (Ex-29/A and Ex.2/A), the contention was that they showed deviations incrementally. Ex.PW29/A showed about 24 deviations as a whole in the building, whereas 2/A which was prepared barely ten days later, showed more deviations. There were internal contradictions as between two documents. These clearly established that the prosecution started to improve upon its case and 'dig out' minor variations with a view to project major structural deviations somehow to implicate the accused and ensnare them.

7.26 It would be relevant at this stage to deal with objections to the reports Ex.2/A and Ex. PW-29/A and depositions of their authors. In relation to Ex. PW-2/A, it was contended that PW-2 had not visited the site with an original sanctioned plan, but with a photocopy, and that the other members of the team did not sign the report. The other objection was that the witness did not speak about the deviations in his testimony and that the report could not be considered one, since it did not furnish reasons in the opinion, to conform to the requirements of Section 51 of the Evidence Act.

7.27 As regards PW-29 and his report, Ex. PW-29/A are concerned, the argument was that the report was not signed by police officers present on the spot; the report was not forwarded to the SDM, and further that the report was not prepared on the spot. So far as objections to PW-2/A are concerned, the contention that the witness went and inspected the site with a copy, would not per se undermine it; however, being an opinion, the Court would have to see whether it is corroborated in material particulars. The Court would have to satisfy itself as to the credibility of what is stated, on its merits. As far as the question of other members of the team not signing the document is concerned, PW-2/D contains the signature of other officials; PW-2 has deposed about the report. The contention that the report is unreasoned, cannot be accepted. The report adverts to specific provisions of byelaws [Byelaw 2(49); 54; 76(2) and (3); 25; 98, of the 1959 Byelaws]; it also specifically states, wherever deviations were found from the sanctioned plans. Thus, the contention has no force.

7.28 As regards PW-29, no doubt be admitted not having prepared the report at site. Yet, that would not vitiate it. The document was included in the list of documents, and the irregularity of the police in not signing at the time of inspection, cannot be such as to undermine its credibility, since PW-29 was extensively cross-examined. Besides, the witness is unconnected with the event, as he is an engineer from the Public Works Department (PWD). For these reasons, the arguments of the accused, about Ex. PW-29/A are unfounded.

7.29 It was submitted that a comparison of the three post 13.6.1997 reports shows that:

(1) according to PW-39/B four partitions existed in the basement up to the ceiling height which was in consonance with the pre 13.6.1997 report. No such irregularity was reflected in Ex.PW-2/A dated 11.8.97. On the other hand, Ex- PW -29/A dated 2.8.1997 showed four deviations, not reflected in Ex.2/A.

(2) the irregularity or deviation in respect of outer wall constructed beyond the height of 3 feet, behind the area of the transformer was first mentioned in the Ex.29/A dated 2.8.1997 ; this portion of the wall was mentioned as unauthorized beyond the height of 12 feet in Ex.2/A. Reliance was placed on the plan Ex.102/C-16 to say that the original proposal of a parapet wall at 3' was modified and shown to be fully constructed; the proposal was approved by MCD. Reliance was also placed on Ex.PW17/DA completion certificate that was preceded by scrutiny report Ex. 17/DX-9 (dated 10.04.1973).

(3) The conversion of spaces near the Manager room adjoining the ticket foyer etc. into glazed verandah could not be construed as structural deviations so serious as to endanger public safety or human life.

(4) While there was no dispute that the sizes of cubicles in the transformer room had been varied, these were not structural deviations as they were permissible under the bye laws being re-positioning of internal partitions.

(5) The observation that a mezzanine floor on the R.S. Joists with timber flooring which had been completely burnt was without any evidence. Undoubtedly the mezzanine

floor had existed but as far back as in 1988, they were removed. Inspection Report Ex.PW-37/K noticed that wooden flooring had been removed. Having regard to the evidence of PW-27 and PW-49 who visited the site earliest in point of time and clearly mentioned that there was no burnt wood at the spot as well as the evidence of PW-64 and the reports Ex.PW-24/A and Ex.PW-64/D (which nowhere disclose any burnt wood, carbon or charcoal attributable to such wood). These observations in Ex. PW-29/A and Ex.PW-22/F were blindly accepted by the Trial Court.

(6) So far as use of a space converted as ticket foyer adjacent to the HT room was concerned that could not be construed as a structural deviation. No evidence was led to show that it hampered free egress or passage of patrons. This was not as clearly mentioned in Ex.2/A.

(7) The use of space sanctioned for restaurant by the Syndicate Bank was authorized as evident from Ex.102/D-1. The same document had permitted the cinema to use top floor for commercial establishments. In these circumstances, the statements in Ex.PW-29/A and 2/A as regards the so called structural deviations on the top floor were uncalled for and the findings of the Trial Court, without any basis.

(8) The use of a stair case around the lift well by the Sehgal Carpets spoken to in PW-29/A and PW 2/A were in no manner connected with the fire accident; even if they were construed to be as deviation like the other observations which could at best be termed as

irregularities. They did not have any connection with the causa causan and certainly not with the cause of death of or injury to the patrons.

(9) Positioning of the exhaust fans in the balcony area as well as 3rd floor rear stair hall instead of opening into direct open space was a first time observation made in Ex.PW 2/A the report prepared on 11.8.1997. This was not even commented upon or found in any of the previous six reports. Besides, it was not proved if it contributed to or aggravated the smoke.

7.30 This Court proposes to analyze the documentary evidence in relation to each deviation, commented upon and found by the Trial Court in the light of the arguments made by the accused as follows: -

(a) One of the significant findings rendered by the Trial Court was as regards the construction of the rear outer wall. The oral evidence relied upon in this regard is of PW-2. The documentary evidence is in the form of plan Ex.15/X-9 (the stilt/ground floor plan sanctioned by order dated 30.5.1972). This drawing (No.4) is in the series containing proposed additions in red colour and deletions in yellow. The outer wall of the building is de-noted in two parallel lines with small square blocks intercepted in between signifying pillars. The legend at two places describe the wall as a '3 foot parapet wall'. This plan significantly discloses that only pillars on the right in the middle side immediately behind the L.T. Transformer were coloured in red. However, the outer 3' wall was shown. This is a

cloth bound plan. The corresponding plan recovered from the Ansal Bhawan is Ex.PW-102/C-1. It is the copy of the same drawing (Ex.PW-15/X-9) containing the signatures of the same MCD Officer and that of the owner. This, however, shows that the portion of the outer wall (shown in this plan also consistently as 3 foot height wall, (but corresponding at the back of the wall from the middle transformer room) was coloured in red. In both the drawings, i.e. Ex. PW102/C-1 as also Ex.PW-15/X9, the rest of the outer wall is shown as parapet wall.

7.31 The building parking plan relied upon by the prosecution and recovered from the office of the MCD Ex.PW-15/X7 is similar to the Ground floor plan (Ex.PW-15/X9) except that parking slots are clearly marked out. This MCD map, a cloth backed one does not show that the parapet wall is covered; indeed it shows that the entire outer wall up to the end of the back side of the transformer room was 3 foot height parapet wall. The corresponding map recovered from the Ansal Bhawan Ex.PW102/C-2 (through Seizure Memo Ex.PW102/A) is a copy of Ex.PW15/X7. This, however, shows a section of the parapet wall is built up. The 1973 Parking plan recovered from the office of the MCD, Ex.PW-15/Y3 was sanctioned by order dated 22.3.1973. This shows a 3 foot height parapet wall. It is an original plan recovered from the MCD office and is cloth backed one, according to the Bye laws. It also contains the signature of Accused No.1. The alterations and deletions are marked in red and yellow colour respectively. There is no indication that the concerned section parallel to the

transformer section was to be fully built up. A copy of this document (Ex.PW-15/Y3) is Ex.PW-102/C-16 seized through Ex.PW-102/A from the Ansals' office. It is the copy of Ex.PW15/Y3. It also reflects the 3 foot height parapet wall. Unlike PW-102/C-1 or PW-102/C2 this does not bears the original signatures of any MCD officials or the stamp sanctioning the plan. No further comment can be made about this except that it corresponds in all respects with Ex.PW-15/Y3 as regards the extent of 3 foot outer parapet wall in the entirety of that section. The last in these series is Ex.PW-15/Y-11 recovered from the office of the MCD. This is the Ground floor plan sanctioned in 1973. This too uniformly shows that the outer wall at a height of 3 foot; it does not disclose that any portion of that outer wall extended to the ceiling. This too is bound by cloth as required by the bye-laws.

7.32 The oral evidence in this regard may be summarized at this stage. PW-2 – Chief Engineer of MCD went along with a team of officials on 11.8.1997. He stated that the wall was not sanctioned up to ceiling height. He stated in the report Ex.PW-2/A that a parapet wall was constructed in full height "whereas this wall has been shown in sanctioned plan up to the height of 12 feet i.e. without any enclosure except some portion which was provided with parapet, railing etc. for safety reasons". This witness supported his report and deposed that the full wall up to the ceiling height as found at site was unsanctioned. He denied suggestions to the contrary in cross examination on behalf of Accused No.1. PW-29/A the Assistant Engineer in his report dated 2.9.1997 clearly mentioned that the outer wall behind

HT & LT room, transformer room was constructed up to the first floor height instead of 3 feet height. In cross-examination on 21.09.2002 he stated that the full height of the wall had been sanctioned. However, three days later on 24.09.2002 he sought to state to the contrary, further deposing that at the time when he had previously recorded his statement, there was noise in the Court hall. His subsequent version was objected to on the ground that such retraction could not be permitted since witness was not declared hostile.

7.33 A conspectus of evidence in this regard would show that Ex.29/A, the first report to mention about this particular deviation is clear enough that a full height wall was not sanctioned. The maps in question i.e. the Parking plan and the Ground floor plans recovered from the office of the MCD as well as the Ansals show that: -

(1) All plans consistently reflected two parallel lines as the outer wall.

(2) This wall is described in more than one place as a 3 foot parapet wall.

(3) The sanctioned plan Ex.102/C-16 recovered from the Ansals by Ex.PW-102/A and the corresponding cloth backed MCD plan Ex.PW-15/Y-3 also describes the outer wall as a 3 foot parapet wall.

(4) The Ground floor plan recovered from MCD office (Ex.PW15/Y-11) also shows that the outer wall has a uniform height at 3 feet and describes it as a "parapet wall".

(5) There is a variation between the two sets of plans relating to ground floor and the parking respectively sanctioned on 30.5.1972, recovered from the office of MCD on the one hand and from the offices of the Ansals on the other. The Ground floor plans sets are PW-15/X9 (from the MCD office); the corresponding copy recovered from the Ansals is PW-102/C-1. They coincide in all details except that in respect of the outer wall described as 3 foot parapet wall the plan Ex.15/X-9 does not contain any red colour (signifying addition) for a section of the 3 foot parapet wall behind the LT and transformer room, whereas the plan recovered from the Ansals PW-102/C-I does so.

The MCD Parking plan Ex.PW15/X9 does also not contain such proposed additions; the Ansals' plan Ex.PW102/C-1 contains such additions in red. The other set i.e. the parking plan similarly reflect the same variations. PW-15/X7, the cloth backed MCD plan recovered from its office does not show a covered parapet; there is no proposal to add anything on that section of the wall. However, Ex.PW-102/C-2, recovered from the Ansals' office shows that concerned section of the parapet wall is sought to be added or constructed upon just as in the case of Ex.PW-102/C1.

7.34 The net result of all this is that there are definitely discernable differences between the plans, i.e. the two sets of plan recovered, from the MCD office on the one hand and those of

Ansals on the other. So far as the accused's arguments on this aspect are concerned, the evidence of PW-39, who first inspected the site after the accident suggests that he did not visit the place with the copy of any sanctioned plan. He only went with the photocopy of the plan which did not reflect any comments regarding additions or deletions in the sanctioned plan. Therefore, the omission does not assume any significance. The first person to inspect the building with the plans and report of this issue is PW-29. His report clearly reflects the deviations i.e. construction of section of the outer wall up to ceiling height. Now, it is a matter of record borne by evidence that the ground floor ceiling is 16 feet. If the originally sanctioned plans permitted a 3 feet parapet wall, the open section had to be above 12 feet, (since it has come in evidence, in more than one place that R.S. Joists were at a height of 8' feet from the ceiling, about half the height of the stilt floor). In view of this, it is apparent that when PW-2 talks of a 12 foot wall and at the same time speaks of a 3 foot parapet wall, the implication is that the space for the outer wall (left open) is 12 feet. However, he is clear enough in his oral evidence that the entire section could not have been built up. If these are seen together with the fact that plans recovered from the MCD, kept in the normal course of official business, as well as Ex.PW-29/A/A-14 & 29/A-3 (original certified copies of the plans, parking plans and Stilt plan recovered from the PWD office with the seals, produced along with PW 29/A in the report) it is clear that outer wall had to be a 3 foot parapet wall; no more no less.

7.35 So far as the evidence of PW-29 is concerned, the extracts of his deposition, the first during his cross-examination on 21.09.2002 read as follows:-

> *"Parafit wall is upto 3ft. from the roof level. The wall upto first floor was sanctioned and thereafter, parafit wall upto 3ft. is sanctioned and thereafter, if there is any construction, that is not sanctioned. The symbols shown as boxes in Ex. PW 2A/17 show the existence of ventilators and these boxes are shown in rectangular shape. It is incorrect that the outside wall is sanctioned upto the top level or that my reading of the plan is not correct."*

The subsequent deposition, during cross examination on 24.09.2002 is as follows:

> "*Cross-examination by Sh. Butan counsel for accused No.2 Gopal Ansal Nil (opp. given).*
>
> *(at this stage the witness submits that he wants to submit that height of outer wall behind HT, LT panel and transformer room had been raised upto first floor height instead of three feet).*
>
> *Cross examination by Sh. Naseem, counsel for Sushil Ansal:*
>
> *My statement was recorded on 21.09.2002. I had given the correct statement on that date. It is correct that question regarding this wall was put to me on the last date of hearing thrice. Vol. there was interruption on both the sides so there was mistake. It is correct that when the said statement was read by me before signing, the CBI Prosecutor and Ms. Krishna Murti was present. But I read it myself and correction was made by me. After reading the statement I had signed the statement and left. I had signed the statement after reading the same and finding it correct. Though I stated that I will clarify my statement on next date. It is incorrect to suggest that under the pressure of CBI I am giving the clarification of wall being raised upto first floor height instead of three feet. Vol. it is mentioned in my report. It is incorrect to suggest that I am deliberately making false statement in the court. "*

These extracts of depositions show that the witness was clear that the entire wall up to first floor height was not sanctioned, even when he was cross-examined on the first day (21.09.2002).

7.36 In the light of this discussion, this Court holds that there is no infirmity in the finding of the Trial Court that the ceiling level of the outer wall was not in accordance with the sanctioned plan, and amounted to a structural deviation.

7.37 So far as R.S. Joists are concerned, it is undeniable that a mezzanine floors on these steel structures at a height of 8 feet from the ground floor, existed some time in 1983. This was pointed out as a deficiency and the subsequent report Ex-37/K shows that the wooden planks were removed. Later, pre-1997 reports (Ex.-PW/37K, 17/D and 16/E) all consistently mentioned that wooden planks were removed from the mezzanine but the R.S. Joists did not exist. The evidence of PW-27 Mr. B.R. Meena, one of the Fireman to first reach the site and attend to the fire as per as PW-49 Mr. R.C. Sharma, Chief Fire Officer show that there were no ash, coal or burnt wood seen by them. The prosecution has also not disclosed that any wood ash recovered and sent for analysis by any expert to be so. It is, therefore, held that Trial Court findings are not borne out by the evidence led by the prosecution in this regard.

7.38 So far as the observation in PW-2/A that the parking area on the Ground floor did not contain demarcations, the Parking plans consistently reflected that clear markings had to exist

at the site. Besides, these parking plans also delineated a 16 foot passage on the ground floor for easy passage of vehicles. The report of PW-2 that such markings for cars did not exist and that such demarcation of 16 foot passage also did not exist has gone unchallenged. Besides, PW-49 also deposed about this. The findings of the Trial Court are, therefore, borne out by the record.

7.39 Neither Ex.PW15/X9 recovered from the MCD office nor the parking plans recovered from the Ansals' office PW-102/CD and PW 102/C-16 (the 1973 plans) or even the parking plans recovered from MCD office (PW-15/X7 and PW 15/Y3) reflect that any of the following ground floor structures were approved: -

(i) Homeopathic Dispensary behind LT/HT/Transformer Rooms on a part of the ramp.

(ii) Enclosure of space to create a glazed verandah next to the Manager's room.

(iii) Enclosure of an open space adjoining the HT room as a ticket counter.

(iv) Use of a small portion at the mid landing of the staircase of the stilt floor at a height of 8 feet, for use as an office.

7.40 As far as the permissibility of R.S. Joists is concerned, the evidence of PW-18 reveals that he was unable to say whether this was contrary to rules or bye laws. PW-39 who

prepared the report Ex.PW-39/A too could not say whether they violated any building bye-laws. Therefore, the findings of the Trial Court in this regard are not sustainable.

7.41 The prosecution contention about a deviation in the height of the transformer room, i.e. its being sanctioned at 3 feet 6 inches below the ramp level, is based on a reading of the sanctioned plan (Ex.PW-15-Y/3) and the report of CBRI (Ex.PW-25/A) as well as testimony of PW-25, who mentioned that the transformer room was at a higher level than the parking ramp. The evidence of PW-2, PW-29 and PW-39 as well as the reports submitted by them, Ex.PW-2/A, PW-29/A and PW-39/A, however, do not reflect these as deviations. The effect of this state of affairs, its facilitation in the spread of spilt transformer oil, and the resulting inferno, are an altogether different matter. But, in the light of the evidence led, it cannot be held that the height of the transformer room was a deviation from the sanctioned plan; the experts, (who included the Chief Engineer and Executive Engineer, MCD and Assistant Engineer, PWD) having knowledge in the relevant field did not speak of this as a deviation.

7.42 The observation of PW-29 in PW 29/A and PW-2 in PW-2/A that the shifting of internal partitions walls in the LT Room, transformer room and HT room was a deviation even though the overall outer size was in accordance with the plan, sought to be countered by the accused that such internal repositioning is permissible under the bye laws, appears to be *prima facie* attractive. However, as observed in the previous section of this judgment, the most important aspect in this regard was the lack of approval by the Licensing Department as

well as the MCD for installation of two transformers. If the Uphaar transformer alone had existed and repositioning of partition walls had been made, the arguments on behalf of the accused would have been more credible. However, the repositioning of the walls whereby the HT equipment was placed alongside, the LT equipment making rooms for two transformers, was a crucial deviation which could not have been deemed merely irregular. Specific approval had to be obtained for this having regard to the nature of the building and the dominant use for which it was to be put i.e. as Cinema Hall, which was to house or host several hundred people and visitors during most part of any day. Clearly such permission was lacking. The trial court's findings here, are based on the materials, and, therefore, justified.

7.43 So far as the deviation in the first floor where two snack bar counters existed by the side of the rear stall, near the exit gate and one near the stair case are concerned both PW-29/A and PW-2/A speak about them. The positioning of a refreshment counter by itself not amount to a deviation. However, what is of significance is that they caused obstruction in the free movement of patrons which is a violation of bye law 76 (2) & (3) of the building bye laws of 1959. The placement of such counters cannot be called structural deviations – they were violations of bye laws, since they inhibited free passage of patrons and obstructed smooth egress, so crucial in the case of an emergency. This also violated Para 10 (1) of the

first Schedule to D.C.R., 1953 and thus constituted a violation of the condition of licenses as well as Section 14 of Cinematography Act.

7.44 The evidence relied on in relation to the deviations of the Second Floor except within the balcony are discussed below: -

(i) Both PW-2/A and 29/A speak about the sweeper room and adjoining toilets being converted into an office room during their depositions. According to PW-2/A report, this constituted violation of Building Bye Law 98 (4) (r). The first two accused did not cross examine either PW/2 or PW/29 in this regard. The findings on these deviation is upheld.

(ii) Both PW-2/A and PW-29/A speak of conversion of the Operator rest room into an office-cum-bar room with drink counter. This conversion was described by PW-2/A as retiring room along with office and attached toilet-cum-dress. PW-2 was not cross examined by accused No.1 & 2 and PW-29 during the cross examination confirmed as to the existence of office-cum-bar room which had been converted instead of Operator rest room and stated that there was no bottle of liquor in the bar room. He deposed that there were chairs and sofas in the bar room and food could be taken from the counter. This deviation, therefore, was proved.

(iii) According to Ex.PW-29/A in between the second floor and loft floor, a full width door on the right side stair case landing had been positioned which caused

hindrance in excess to the terrace. This went unrebutted; this fact was, therefore, proved.

(iv) According to PW-2/A, toilet block on the Second Floor was converted into an office and it constituted violation of bye-law 98 (4) (o). This was not contested during the course of PW-2's cross examination. This deviation too was, therefore, proved.

(v) PW-29/A stated that a reception counter of M/s Sareen Associates, an occupant in the top floor, having its office located on the staircase leading to the terrace was an obstruction to the staircase passage. There was no challenge to this; the fact was, therefore, proved.

(vi) Four exhaust fans were positioned to open in the front stair case hall instead of opening to a direct open space. This was mentioned in both Ex.-PW-2/A and PW-29/A. PW-2 was not cross examined; in cross examination PW/29 clearly mentioned that the exhaust fans should have faced an open area. According to PW-2/A this was in violation of bye law 32 of Building Bye Law, 1959. This fact too, was, therefore, established.

7.55 Point No.3, 8 & 10 in very report Ex.PW-17/B dated 9.6.1983 mentioned about letting out the Third floor to various organizations, creation of a part in staircase into an office plus loft over it on a part of the staircase on the top floor and extending it to the portion above toilets shown in the sanctioned plan and lack of permission in terms of condition 17 of license

for the offices. The subsequent reports PW-37/K dated 29.8.1988; PW-17/D dated 30.4.1997, the report dated 12.8.1994 and PW-16/E dated 6.5.1996, all reiterated these objections. The post 13.6.1997 reports i.e. Ex.PW-2/A, Ex-39/B and Ex.29/A also referred to four offices as well as conversion of stair case over the loft level at different levels into office. PW-2/A in his report clearly mentioned that these offices amounted to violations of bye laws 32 & 98 of Building Bye Laws, 1959. The Trial Court found that these amounted to violations.

7.56 The appellants' contention is that permission to let out had been granted far back on 12.7.1974. They also rely on Ex.102/D-1. It is also contended that deviations were never notified through any show cause notice or determined to be hazards by the concerned Municipal office. Under these circumstances, determination by the very same agencies after the event should be seen all such offices being contrary to bye-laws should be viewed suspicion as an attempt to cover up the official omissions rather than pointing at any fault by the Cinema or its Management.

7.57 The argument that the licensing department had given permission, for the letting out of the third floor or for that matter any part of the premises through a letter dated 12.7.1974 (Ex PW 102/D and Ex PW 17/DC), has to be viewed in the context of the other facts and circumstances. The relevant portion of the letter granting permission is extracted below: -

> *"With reference to your letter dated 19.6.74 on the subject noted above, you are allowed to let out the portion of the cinema building i.e. top floor and*

ground floor to commercial establishments u/r 45 (xi) of the Delhi Cinematograph Rules, 1953"

7.58 All the pre-tragedy inspection reports, such as, Ex PW 37/K, Ex PW 37/C, Ex PW 17/D and Ex PW 16/E mention about the third floor commercial establishments as well as the homeopathic dispensary on the ground floor. No doubt, Ex.PW 37/K states that the existence of the dispensary is not a fire hazard; yet, it is listed as a deviation or area of concern. Ex.PW 37/C, Ex PW 17/D and Ex PW 16/E also mention this. So far as the top floor offices and the enclosure of a part of the staircase, as well as the creation of the lot are concerned, Ex PW 37/C, Ex PW 17/B and Ex PW 16/E mention that they have been removed. The letter of the cinema management dated 30/8/1994 (Ex PW 49/F), claimed that the concerns have been addressed in the following terms:

"Your Divisional Officer Mr. Pawar inspected the above premises as per the Court Directives to ascertain whether we have complied with the conditions issued by the Court or not to meet the fire fighting and fire safety measures in the above complex.

We confirm the following:

1. Wooden planks have been removed. Steel members in the area are no hazard and hence not removed. (parking)

2. Homeopathic Doctor's cabin has bgeen got vacated. (parking)

3&4 The basement is not being used for any other purposes except for parking as sanctioned. Also proper fire arrangements are existing in the basement. The entire basement has automatic sprinkling system.

No combustible material are being stored in the basement. Incidental spares for operating cinema are only being stored in a small store in the basement room. The store is protected by fire extinguishers.

5. No office exists above the stair case as alleged.

6. Store room in the basement is being used as store of Cinema only and not by any company.

7. Offices on the top floor have been provided with suitable fire protection arrangements.

8. The restaurant sanctioned on ground floor is in the possession/occupation of Syndicate Bank which is less hazardous than a restaurant.

9. Denied.

Thanking and assuring you of our best co-operation at all times.

Yours faithfully
for GREEN PARK THEATRES ASSOCIATED PVT. LTD."

7.59 Ex PW 37/AC was the reply to the above letter, by the Fire Service Authorities, which clearly stated that the offices near the staircase and on the top floor, were still matters of concern from the point of view of fire safety, in the following terms:

"Please refer to your letter No.nil dated 30.8.94 on the matter cited as subject. In this connection, it is to inform you that the inspection of Uphaar Cinema was carried out by the Asstt. Divisional Officer P.K. Sharma accompanied by Station Officer Surinder Dutt to verify the compliance of the shortcomings pointed out earlier vide our letter dated 12.8.94. During the course of inspection, following shortcomings were observed:

1. As regard to point at Sl.No.8, an office has been erected forming part of the staircase on the top floor is still in existence.
2. At least three offices on the top floor having wooden partition are still in existence and there is no fire extinguishers accept one DCP of non ISI mark found kept.

In view of the above you are requested to rectify the above mentioned shortcomings under intimation to the undersigned."

7.60 Cumulatively, these show that although permission to let out the top floor was given on 12.7.74, yet, all the inspection by statutory agencies, particularly the fire safety authorities unanimously determined them to be fire hazardous from the safety angle.

The Court cannot also be oblivious to the fact that the cinema had not been granted permanent license on annual basis, ever since the first report after 1983. These deviations, therefore, assumed an incrementally risky character, which the cinema occupier/licensee and management were aware of. That no penal action was taken at that time, in the opinion of the court, is no answer to the existence of these risks and the consciousness on the part of the licensees/occupier of the cinema. More importantly, the aspect of structural deviations and issue of the fire hazards, has to be viewed in the light of the following remarks made in Ex PW 2/A:

"1. Conversion of cinema hall into cinema cum private office complex;
2. Shifting of cinema administration offices at various floors without keeping in mind the aspect of proper ventilation and sanitary requirements;
3. Opening of exhaust fans in the stair-hall instead of opening into a direct open space;
4. Erection of R.S. joists in between stilt & first floor to create extra floor;
5. Enclosure of stilt area and construction of dispensary in the stilt area;

6. Storing and using of various combustible materials including provision of wooden acoustic panels and wooden partitions in the building;
7. Considerable increase in number of seats in the auditorium and also creation of boxes/dress circle; and
8. Closure of one of the exits and shifting of gangway from its proper sanctioned plans and also reduction in width of one of the gangways thereby increasing travel distance."

The position in the balcony of the cinema hall

7.61 The Trial Court found that, according to the original sanctioned plan, 250 seats were allowed in the Balcony, which through a notification No.F2/45/75-Fi (G) dated 30.09.1976, was increased to 293. The court found that in 1974, the inspection room was converted into a 14 seater private box for the use of the owners and subsequently, due to the increase in the number of seats, the right side gangway was closed in lieu of which the middle gangway was created. In 1979, the earlier notification (of 1976) allowing additional seats were withdrawn and a show cause notice was issued for removal all 100 additional seats sanctioned at Uphaar Cinema. The withdrawal/cancellation notification was challenged before this Court, which directed the issue to be considered by the licensing authorities after inspection. In the meanwhile, w.e.f. June 1978, an 8-seater additional box was installed where the right-side exit from the balcony had originally been sanctioned (Ex.29/DL). In the year 1980, the cinema hall sought for permission to install additional 15 seats in the balcony. After the proposal was moved and fresh applications made, the additional seats were installed, after 04.10.1980 (Ex.29/DY & DZ).

7.62 The Trial Court found that changes made between the period 1974 and 1980 by installation of 8-seater boxes on the right-side gangway, narrowing of passages (which hindered free egress to the exits) and the closure of the right side exit violated several provisions of the DCR, 1953 and DCR, 1981.

The arguments on behalf of the accused 1 & 2 broadly are as follows:-

(1) The relevant rules for determination of standards are the Delhi Cinematograph Rules, 1953.

(2) Factually, there was no violation of any rule or law or any other building norm.

(3) The placement of the 8-seater box, which led to closure of right-side exit, repositioning/closure of gangway, installation of additional seats and other changes in the balcony of the cinema hall was preceded by due sanction by relevant authorities.

(4) The Trial Court findings that such sanction did not legitimize or render lawful these changes, is contrary to the record and law.

7.63 At the outset, it would be relevant to notice the two sets of rules, DCR, 1953 and DCR, 1981.

Delhi Cinematograph Rules, 1953	**Delhi Cinematograph Rules, 1981**
Procedure in granting license	**Procedure in granting license**

3. (1) Licenses granted under Section 10 of the Act shall be either annual or temporary. (2) An annual license shall only be granted in respect of a building which is permanently equipped for cinematograph exhibitions and in respect of which the requirements setforth in the First Schedule to these rules are fulfilled. It shall be valid for one year from the date of issue and shall be renewable on the application of the licensee. (3) "Notwithstanding anything in the preceding sub-rule, an annual license may be granted or renewed in respect of building already licensed for cinematograph exhibitions. The cinema houses which come into existence after the issue of these rules, may be licensed only if all the provisions of the rules set forth in the First Schedule are complied with." Provided that the provisions of paragraphs 1(1), (2) and (3), 4, 8(i), 9, 10(3), (4) and (5), 13(2) and (3), 18(1), 19 and 29 in the First Schedule may be relaxed by the Chief Commissioner in any particular case to such extent and subject to such conditions as the Chief Commissioner may think fit. (4) Subject to the provisions of the rules in Part V, a temporary license may be granted in respect of any place for exhibitions by means of touring cinematograph only. A temporary license may be given in the first instance by the licensing authority for a period of two months. The validity of such a temporary license may, however, be extended upto a maximum of six months by the State Government. The aggregate period of touring cinematograph at one place shall not be	3.(1) Licenses granted under Section 10 of the Act shall be either annual or temporary, or casual. (1)(a) Any person desirous of erecting a Cinema House or converting an existing building into a Cinema house shall apply to the Licensing Authority for a provisional clearance certificate in respect of the building and the site plans. Such application shall be accompanied by five copies of the site and building plans giving details of the structure, location of exists, gangways, toilets, foyers, booking windows, stair cases, lifts, projection rewinding and switch rooms, parking arrangements, etc. in the building plans and showing surrounding roads and buildings in the site plans. The Licensing Authority after scrutinizing the plans in consultation with the Executive Engineer, PWD or any other authority concerned if he considers it necessary, shall, if the plans are in conformity with these rules, grant a provisional clearance certificate: Provided that grant of such provisional clearance certificate shall not ipso facto entitle the applicant for grant of a regular cinema license on completion of the building or give any immunity from the application of any new provisions to these rules which might be incorporated after the issue of such certificate and before the grant of a license under the Cinematograph

extended beyond the period of six months in any case. A fee of Rs.20/- will also be levied for every extended period of two months or less.	Act. (2) An annual license shall only be granted in respect of a building which is permanently equipped for cinematograph exhibitors and in respect of which the requirements setforth in the First Schedule to these rules are fulfilled. It shall be valid for one year from the date of issue and shall be renewable by the application of the Licensee. (3) Notwithstanding anything in the preceding sub rule, an annual license may be granted or renewed in respect of building already licensed for cinematograph exhibitions. The cinema houses which come into existence after the issue of these rules, may be licensed only if all the provisions of the rules setforth in the First Schedule are complied with. Provided that the specifications mentioned in the First Schedule may be relaxed by the Administrator in any particular case to such extent and subject to such conditions as the Administrator may think fit. (4) Subject to the provision of the rule in Part V, a temporary license may be granted in respect of any place for exhibition by means of temporary cinematographs only. A temporary license may be given in the first instance by the licensing authority for a period of six months. The validity of such a temporary license may be

	extended by the Administrator for a period upto 6 months at a time, till such time the Administrator considers necessary. The aggregate period of temporary cinematograph at one place shall not be extended beyond the period of 5 years in any case. No fresh license shall be issued for the same site on which a temporary cinema has run for five years, for the next six months following closure of the temporary cinema. All temporary cinemas will conform to the model plan approved by the Administration. A fee of Rs 250/- will be levied for every extended period. (5) A casual license for a period not exceeding 7 days may be granted by the licensing authority in respect of any place for exhibition of films after satisfying itself about the fitness of the projector and censorship of the film to be screened. (6) The licensee shall be responsible for all acts and omissions of his managers, servants or agents which are committed or made with his knowledge and consent and arising out of or in connection with the Cinema to which his license relates.
Compliance: 10.(1) The licensee shall be responsible for compliance with the provisions of these rules and with the conditions of his license, for the maintenance of the licensed premises at all times and in all respects in conformity with the standards prescribed by these rules and for	10. (1) The licensee shall be responsible for compliance with the provisions of these Rules and with the conditions of his license, for the maintenance of the licensed premises at all times and in all respects in conformity with the standards

taking all necessary measures before any cinematograph exhibition is commenced to ensure the safety of the public and his employees against fire and other accidents. (2) The licensee or some responsible person nominated by him in writing for the purpose shall be in general charge of the licensed premises and cinematograph during the whole time where any exhibitions is in progress.	prescribed by these rules and for taking all necessary measures before any cinematograph exhibition is commenced. The clearance from the Chief Fire Officer, Delhi Fire Service shall be obtained by the licensee to ensure the safety of the public and his employees against fire. (2) The licensee or some responsible person nominated by him in writing for the purpose shall be in general charge of the licensed premises and cinematograph during the whole time where any exhibition is in progress.
Inspections 12.(1) Before granting or renewing an annual license the licensing authority shall: (a) call upon the Executive Engineer to examine the structural features of the building and report whether the rules thereto have been duly complied with; (b) call upon the Electric Inspector to examine the cinematograph and the electrical equipment to be used in the building and to report, whether they comply with the requirements both of these rules and of the Indian Electricity Act, 1910 and of such of the rules made thereunder as are applicable, whether all reasonable precautions have been taken to protect spectators and employees from electric shock and to prevent the introduction of fire into the building through the use of the electrical equipment, and whether the prescribed fire extinguishing appliances have been provided, are in working order and are suitable for the purpose for which they are intended. (2) All defects revealed by such inspections shall be brought to the notice of the applicant or licensee and of the licensing	**Inspections** 14.(1) Before granting or renewing an annual license the licensing authority shall: (a) call upon the Executive Engineer to examine the structural features of the building and report whether the rules thereto have been duly complied with; (b) call upon the Electric Inspector to examine the cinematograph and the electrical equipment to be used in the building and to report, whether they comply with the requirements both of these rules and of the Indian Electricity Act, 1910 and of such of the rules made thereunder as are applicable, whether all reasonable precautions have been taken to protect spectators and employees from electric shock and to prevent the introduction of fire into the building through the use of the electrical equipment. (c) call upon the Chief Fire Officer or any officer authorized by him in this

authority, who may refuse to grant or renew the license unless and until they are remedied to his satisfaction.	behalf for the purpose of ensuring the proper means of escape and safety against fire and to report whether the prescribed fire extinguishing appliances have been provided; are fire working order and are suitable for the purpose for which they are intended. (2) All defects revealed by such inspections shall be brought to the notice of the applicant or licensee and of the licensing authority, who may refuse to grant or renew the license unless and until they are remedied to his satisfaction.
	2. No portion of the building shall be occupied or used as factory, workshops, or for storage purposes or as a hotel. Licensing authority may however, permit commercial block provided safety requirements such as independent means of escape are fully ensured to his satisfaction. Only the canteen for the preparation and sale of food and drink alongwith sale counter, within the premises of a theatre shall be allowed with the permission in writing of the licensing authority.
First Schedule, Delhi Cinematograph Rules, 1953	**First Schedule, Delhi Cinematograph Rules, 1981**
3.**External Walls**: (1) All external and partly walls shall be	3. **External Walls:** (2) Where the building is in close

of brick, mud, stone, corrugated iron or concrete. (2) Where the building is in close proximity to another building, it shall be separated therefrom by walls and structures of fire-resisting material in a manner to be approved by the Licensing Authority and no opening in the walls or in any part of the building such as may be liable to communicate fire shall overlook the neighboring building. (3) Any opening in the building over-looking an adjacent side upon which an inflammable structure is erected or upon which inflammable material is stored shall be protected to the satisfaction of the Licensing Authority.	proximity to another building, it shall be represented therefrom by walls and structure of fire, resisting materials, in a manner to be approved by the licensing authority and no opening in the walls or in any part of the building such as may be liable to communicate fire shall overlook the neighboring building.
6. **Accommodation**: (1) The total number of spectators accommodated in the building shall not exceed twenty per hundred square feet of the area available for sitting and standing or twenty per 133 ½ square feet of the overall area of the floor space in the auditorium. (2) A notice showing the number of spectators permitted by the conditions of the licence to be admitted to any one part of the	6. **Accommodation**: (1) No part of the auditorium shall provide accommodation exclusive of passages at a scale higher than 0.45 sq.m per person. The maximum gross occupant load shall be 0.60 sq. m of the overall area of the floor space in the auditorium, per person. (2) A notice showing the number of spectators permitted by the conditions of the licence to be admitted to any one part of the building

building shall be exhibited at a prominent place either at the entrance of the building or in the auditorium.	shall be exhibited at a prominent place either at the entrance of the building or in the auditorium.
7. **Seating**: (1) The seating in the building shall be arranged so that there is free access to exits. (2) The space assigned to each person shall not be less than twenty eight inches deep where backs are provided and not less than twenty four inches deep where backs are not provided and not less than twenty inches wide where arms are provided and eighteen where arms are not provided. (3) The rows of seats shall be so arranged that there is a clear space of not less than fifteen inches between the back of one seat and the foremost portion of the seat arm of frame behind measured between perpendiculars. (4) All seats, except those in private boxes, shall be securely fixed to the floor, and if battened together or made in inks, the complete ink shall be firmly attached to the floor.	8. **Seating**: (1) The seating in the building shall be so arranged that there is free access to exits. (2) The distance between back of one row of seats to the back of another row of seats immediately behind it shall not be less than 90 cm (3 ft), where push back seats are used and 98 cm (3 ft 3 inches) where fixed seats are used. The width of the seats, shall not be less than 50 cm (20 inches) where arms are provided and 45 cm (18 inches) where arms are not provided. (3) The rows of seats shall be so arranged that there is a clear space of not less than 38 cm (15 inches) between the back of 1 seat and the foremost portion of the seat arm of frame behind, measured between perpendiculars. (4) All seats, except those in private boxes, shall be securely fixed to the floor, and if battened together or

(5) The distance between the front row of seats and the screen shall not be less than twenty-five feet in case of cinema coming into existence after 13th March, 1952.	made in inks, the complete ink shall be firmly attached to the floor. (5) The distance between the front row of seats and the screen shall not be less than 9.0 m (30 ft) subject to the angle of elevation to the centre of the top edge of the projected picture on the screen to the horizontal plane passing through the observer's eye, seated in the row nearest to the screen, not exceeding 35 degrees. (6) The rows of seats shall be numbered continuously from one end to the other in the Auditorium with illumination on the corner seats on verge, showing series of the rows.
8. **Gangway**: (1) Gangway not less than forty-four inches wide shall be provided in the building as follows:- (a) Down each side of the auditorium. (b) Down the centre of the seating accommodation at intervals of not more than twenty-	9. **Gangway**: (1) Clear passages or longitudinal gangways shall be formed at the sides and down the centre of the seating (seating between sides) in every part of the auditorium in such manner that no seat shall be more than 7 seats from any of the gangway.

five feet. (c) Parallel to the line of the seating so as to provide direct access to exits, provided that not more than one gangway for every ten rows shall be required. (2) All gangways, exits and the treads of steps and stairways shall be maintained with non-slippery surfaces. (3) Druggets, matting and floor covering, if provided in gangways, shall be securely fastened to the floors.	(a) The width of the main longitudinal gangway shall not be less than 120 cm (4ft) and the width of the side longitudinal gangway shall not be less than 90 cm (3 ft). (b) At least two longitudinal gangways shall directly be connected to the exit door. For this purpose, if the side longitudinal gangways are connected to the exit door, the width of the same shall not be less than 120 cm (4 ft). (2) Cross gangways of not less than 120 cm (4 ft) wide shall be provided parallel to the line of seating so as to provide direct access to the exit. At least one cross gangway shall be required for every 15 rows. (3) All gangways, exits and the treads of steps and stair-ways shall be maintained with non-slippery surfaces.

	(4) Druggets, matting and floor covering, if provided in gangways, shall be securely fastened to the floors. Proper lighting arrangements near the feet shall be made to facilitate the patrons in finding their way to their seats or to go outside during the shows.
(4) The exits and the gangways and passages leading exits shall be kept clear of an obstruction other than rope barriers provided in accordance with sub-rule (6). On no account shall extra seats be placed in the gangways at the time of performances in such a way as to block or effectively reduce their width.	(5) The exits and the gangways and passages leading exits shall be kept clear of an obstruction other than rope barriers provided in accordance with sub-rule (7). On no account shall extra seats be placed in the gangways at the time of performances in such a way as to block or effectively reduce their width.
(5) If steps have to be inserted a gangway or passage there shall be no less than three steps at any one place. The treads shall not be less than fifteen inches wide and shall be of uniform width and height.	(6) If steps have to be inserted a gangway or passage there shall not be less than three steps at any one place. The treads shall not be less than 30 cm (12 inches) wide and shall be of uniform width and height.
(6) Rope barriers in gangways or elsewhere shall be fitted with clips or fastenings which will part in the centre on slight pressure, and shall not trail on the floor.	(7) Rope barriers in gangways or elsewhere shall be fitted with clips or fastenings which will part in the centre on slight pressure and shall not trail on the
(7) Guard rails not less than three feet six inches above floor level shall be provided on the parapet at the foot of gangways in galleries where the incline of gangway exceeds fifteen degrees.	

	floor. (8) The height of parapet in galleries shall not be less than 105 cm (36 inches).
9. **Stairways**: (1) There shall be at least two stairways each not less than four feet wide to provide access to any gallery or upper floor in the building which is intended for use by the public. (2) The treads and risers on each flight of stairs shall be of uniform width and height. The treads shall not be	10. **Stairways**: (1) All staircases shall be constructed entirely of bricks, stones, cement or concrete with free resisting roof and ceiling and shall have solid squire (as distinguished from spandrill) steps and landings of approved stone or of such other fire-resisting material and construction as may be approved by the licensing authority with treads not less than 30 cm (12 inches) wide and with risers of not more than 15 cm (6 in) high [each lapping at least 2.5 cm (1 in) over the back edge of the steps below it] in flights of not more than 12 or less than 3 steps. (2) There shall be at least two staircases of width not less than 1.50 m (5 ft) to provide access to any gallery or upper floor in the building which is intended for use by the public. (3) The treads and risers of steps

less than eleven inches wide and the risers shall not be more than seven inches high. (3) There shall be no winders. (4) A continuous hand rail shall be fitted to each side of stairways. (5) No stairways shall discharge into a passage or corridor against or across the direction of exit.	on each flight shall be of uniform width and height. Provided that in case of elliptical and other curved forms of stairs, the tread on inner side shall not be less than 2.5 cm (10 inches). (4) No staircases shall have more than two flights of 12 steps without a turn and the width of the landing between such flights shall be at least the same as the width of the staircase. (5) Stairs turning at an angle shall have a proper landing without winders being introduced at the turn. (6) Every staircase forming an exit from an upper gallery or tier of the auditorium shall be enclosed on both sides with walls or bricks or of fire-resisting material, materials in the storeys through which it passes and no openings shall be made in the auditorium except the one required for exit from the gallery under which it serves, provided that staircase leading to the first or lower gallery or tier may be left open on one side in which case the open side shall be provided by at our handrails and

	balustrades. (7) All staircases shall have on both sides strong handrails firmly secured to the wall by strong metal brackets about 7.5 cm (3 inches) clear therefrom and about 90 cm (3 ft) above the stairs but such handrails shall not run on level platforms and landings where the length of such platform or landing exceeds the width of the stairs. (8) There shall be no recesses or projections in the walls of such staircases within 1.50 m (5 ft) of the floor and any fittings for lighting shall be at least 2.0 m (6 ft 8 in) above the steps or landing. (9) The minimum head-room in a passage under the landing of a staircase shall be 2.2 m (7 ft 3 in). The minimum clear head room in any staircase shall also be 2.2 m (7 ft 3 in). (10) No stairways shall discharge into the passage or corridor against or across the direction of exist.

	(11) In cases where ramps are provided instead of staircases slope shall not be more than 1:10 and the ramps shall be surfaced with non-slipping material. The width of a ramps shall not be less than 1.5 m (5 ft). Further, handrails shall be provided on both sides of the ramps.
13. **Ventilation**: (1) The building shall be provided with efficient means of ventilation direct to the open air. (2) Unless the auditorium is air-conditioned the means of ventilation shall take the form of natural ventilation and power-driven exhaust fans suitably located and of adequate size for the purposes intended. (3) Where natural ventilation is provided by windows or sky lights which have to be darkened or obscured free permanent top ventilation shall be arranged by means of ridge or ceiling ventilators. The clear opening of such ventilators shall not be less than one square foot for every ten persons than can be accommodated. (4) If more than one exhibition is given on	15. **Ventilation**: (1) The buildings shall be provided with efficient means of ventilation, direct to the open air at the rate of not less than 25 cum/person/hour. (2) Unless the auditorium is air-conditioned the means of ventilation shall take the form of natural ventilation and power driven exhaust fans suitably located and of adequate size for the purpose intended. (3) Where natural ventilation is provided by windows or skylights which have to be darkened or obscured free permanent top ventilation shall be arranged by means of ridge or ceiling ventilators. The clear openings of such ventilators shall not be less than 0.93 sq. m (1 sq. ft.)

any day the whole of the auditorium shall be flushed with air for at least fifteen minutes before each exhibition, no spectators being permitted to remain or be in the auditorium during any part of this period.	for every ten persons that can be accommodated. (4) If more than one exhibition is given on any day the whole of the auditorium shall be flushed with air for at least fifteen minutes before each exhibition, no spectators being permitted to remain or to be in the auditorium during any part of this period.
15. **Parking arrangements**: (1) Such arrangements shall be made for the parking of motor cars and other vehicles in the vicinity of the buildings as the licensing authority may require. (2) No vehicle shall be parked or allowed to stand in such a way as to obstruct exits or impede the rapid disposal of the persons accommodated in the building in the event of fire or panic.	
16. **Fire precautions**: (1) Fire extinguishing appliances suitable to the character of the building and of a pattern, class and capacity approved by the licensing authority shall be provided as prescribed by him; these appliances shall be disposed to his satisfaction so as to be readily available for use in case of fire in	18. **Precautions against Fire**: (1) *Tanks* – In every permanent or temporary cinema there shall be provided on the top the proscenium wall or in some other place to be approved by the Executive Engineer/Chief Fire Officer, Delhi Fire Service concerned two cistern

any part of the building. (2) There shall always be sufficient means of dealing with the fire readily available within the enclosure and these shall include a damp blanket, a portale chemical fire extinguisher and two buckets of dry sand. (3) All fire fighting extinguishing appliances shall at all times be maintained in proper working order and available for instant use, and all chemical fire extinguishers shall be capable of withstanding a pressure of not less than 250 lbs. square inch. (4) During an exhibition all fire extinguishing appliances shall be in charge of some person or persons specially appointed for this purpose. Such persons need not be employed exclusively in looking after the fire appliances but they must not be given any other work during an exhibition which would take them away from the building or otherwise prevent them from being immediately available in case of danger or alarm of fire.	(connected with fire service in the cinema) which shall be kept always filled with water. Each of the cisterns shall be capable to containing at least 1,135 litres of water for every 1200 individuals of the public to be accommodated in the cinema. These cisterns shall be fitted with an outside indicator suitably placed so as to show clearly the depth of water therein, and the water shall be kept clean and free from sediment and covered over with properly fitting covers so as to be mosquito proof. The cisterns shall be cleaned once every year. Provided that nothing in this rule shall apply to touring cinemas. (2) *Hydrants/Hose Reels* – All cinemas shall also be provided with such number of hydrants/hose reels (not less than two) as may be fixed by the licensing authority. These shall be fixed at such sites as may be approved by the Chief Fire Officer. (3) *Fire buckets* – (i) Fire buckets of approved design with a conical base shall be

	provided in such numbers as the Licensing Authority may direct and shall be kept at all times full of water which shall be changed regularly twice every week. Fire bucket shall be housed in fire cisterns specially designed for the purpose. A pinch of lime shall be added to such water to prevent the breedings of mosquitoes. Buckets of dust of dry sand shall also be provided in such numbers as the Licensing Authority may direct and the attention of the public shall be drawn to the water and sand bucket by placards legibly painted and fixed immediately above them. (ii) Atleast one bucket filled with dry sand shall be kept in some accessible position on the stage in readiness for use in dealing with an electric fire. (4) *Portable Fire Extinguishers* – (i) Portable fire extinguishers of an approved type shall be provided in such numbers as the Licensing Authority may from time to time direct and shall be placed on brackets 1.20 m. from the ground. Directions for

	space using them shall in all cases be prominently printed on the extinguisher or on a card placed over the extinguisher and the attention of the public shall be directed to them by placards legibly printed or painted and fixed immediately above them. (ii) Portable extinguisher shall be refilled or well cleaned and recharged every 12 months a record of which should be kept for inspection. (5) *Fire Extinguishers etc., for Enclosures* – Two pressure type fire extinguishers, two buckets of water, one bucket of sand, a blanket shall always be kept inside the enclosure. A large sponge shall be kept in one of the buckets of water and one fire extinguisher shall also be kept immediately outside the enclosure. (6) *Airconditioning Plant Room, Electrical Sub-stations, Rectifier Room etc* – Portable fire extinguishers and fire buckets of approved type shall be provided as directed by the Chief Fire Officer. (7) *Curtains* – All curtain covering

	doors and passage shall be hung so as not to trail on the floor. (8) *Telephone* – In places where there is a public telephone, the cinema building shall be connected by telephone with the nearest fire brigade station in that place. (9) *Firemen* – (i) In every cinema including a touring cinema the employees shall be trained in the use of fire appliances, and shall for such purposes be drilled periodically at least once in every month. (ii) During an exhibition all fire extinguishing appliances shall be in charge of some person or persons specially appointed for this purpose. Such persons need not be employed exclusively in looking after the fire appliances but they must not be given any other work during an exhibition which would take them away from the building or otherwise prevent them from being immediately available in case of danger or alarm of fire. (iii) the instructions to be followed in case of fire

	shall always be posted in some conspicuous place, so that all people connected with the cinema shall be acquainted with their contents. (iv) A report of any fire or alarm of fire, however slight shall be at once sent to the fire brigade. (10) *Lighting conductors* – Lightening conductors shall be provided in each cinema building.
	11. **Entrance**: (1) The auditorium/Theatre, whether it is indoor or outdoor, shall be provided with at least one entrance for each class clearly placed in such a way as to afford the patrons speedy and convenience entry into the auditoriums/theatre. Sufficient number of staff shall be provided on entrances and gangways to help the patrons find their seats.
10. **Exits**: (1) Every public portion of the building shall be provided with an adequate number of clearly indicated exits placed in such positions and so maintained as to afford the audience	12. **Exits**: (1) Every public portion of the building shall be provided with an adequate number of clearly indicated exits placed in such positions

ample means of safe and speedy egress. (2) In the auditorium there shall be atleast one exit from every tier, floor, or gallery for every hundred persons accommodated or part thereof; Provided that from every upper floor or gallery there shall be not less than two exits: Provided further that an exit on or by way of stage or platform shall not be reckoned as one of exits required by this rule. (3) Every exit from the auditorium shall provide a clear opening space of not less than seven feet high and five feet wide. (4) Exits from the auditorium shall be suitably spaced along both sides and along the back thereof and shall deliver into two or more different thorough fares or open space from which there are at all times free means of rapid dispersal. (5) Every passage or corridor leading from an exit in the auditorium to a final place or exit from the building shall be of such width as will in the opinion of the licensing authority enable the persons who are likely to use it in an emergency to leave the building without danger of crowding or congestion. At no point shall any such passage or corridor be less than five feet wide and it shall not diminish in width in the direction of the final	and so maintained as to afford the audience ample means of safe and speedy egress-upon a public thorough fare. (2) In the auditorium there shall be at least one exit from every tier, floor or gallery for every 150 persons accommodated or part thereof. Provided that from every upper floor or gallery there shall be not less than two exits: Provided further that an exit on or by way of stage of platform shall not be reckoned as one of the exits required by this rule. (3) Every exit from the auditorium shall provide a clear, opening space of not less the 2.10 m (7ft) high 1.50 m (5 ft) wide. (4) Exits from the auditorium shall be suitably spaced along both sides and along the back thereof and shall deliver into two more different thorough fares or open space from which there at all times free means of rapid dispersal. (5) Every passage or corridor leading from an exit in the auditorium to a final place of exit from the building shall be of such width as

place of exit. (6) The combined width of the final place of exit from the building shall be such that there are at least five feet of exit width for every hundred persons that can be accommodated in the building. (7) All exit doors shall open outwards and shall be so fitted that when opened they do not obstruct any gangway, passage, corridor, stairway or landing. (8) All exit doors and doors through which the public have to pass on the way to the open air shall be available for exit during the whole time that the public are in the building and during such time shall not be locked or bolted. (9) All exits from the auditorium and all doors or openings (other than the main entrance) intended for egress from the building shall be clearly indicated by the word "EXIT"in block letters, which shall not be less than seven inches high and shall be so displayed as to be clearly visible in the light as well as in the dark. (10) All other doors of openings shall be so constructed as to be clearly distinguishable from exits. They may be indicated by the words "NO THOROUGHFARE" arranged as in the figure below, but no notice bearing the words "NO EXIT" shall be used in any part of the building:	will in the opinion of the licensing authority enable the persons who are likely to use it in emergency to leave the building without danger of crowding or congestion. At no point shall any such passage or corridor be less than 1.50 m (5 ft) wide and it shall not diminish in width in the direction of the final place of exist. (6) The combined width of the final place of exit from the building shall be such that there are atleast 1.50 m (5 ft) of exit width for every 150 persons that can be accommodated in the building. (7) All exit doors shall open onwards and shall be so fitted that when opened they do not obstruct any gangway, passage, corridor, stairway of landing. (8) All exist doors and doors through which the public have to pass on the way to the open air shall be available for exist during the whole time that the public are in the building and during such time shall not be locked or bolted.

NO THOROUGHFARE 34. (1) Provision shall be made for adequate illumination of the auditorium and the exits therefrom to the outside of the building including any passages, corridors, landings and stair-ways the notices indicating the positions of exits, and all parts of the building to which the public are admitted.	(9) All exists from the auditorium and all doors or openings (other than the main entrance) intended for egress from the buildings shall be clearly indicated by the word "EXIT" in block letters which shall not be less than 18 cm (7 inches) high on or above the doors at least 2.10 m (7 ft) high and shall be so displayed as to be clearly visible in the light as well as in the dark. (10) All other doors of openings shall be so constructed as to be clearly distinguishable from exits. They may be indicated, by the words "NO THOROUGH FARE" arranged as in the figure below, but no notice bearing the words "NO EXIT" shall be used in any part of the built. NO THOROUGH FARE (11) At the end of the show not more than one entrance for each class of seats in the hall and balcony shall be kept close for the purpose of regulating entry of patrons to the next show. All the remaining doors shall be kept fully open to

		facilitate easy and speedy egress.
	(12)	The Licensee of the Cinema hall shall not prevent the public from leaving by any exit door.

7.64 It would be first necessary to deal with the appellant's contention that DCR, 1981 did not *proprio vigore* apply to this case. This submission is premised upon Rule 3(3) of the said DCR, 1981.

7.65 Rule 3(1) prescribes the requirement that those desirous of erecting cinema halls or converting an existing building into a cinema hall, have to apply to the licensing authority for provisional Clearance Certificate. Rule 3(2) provides that an annual license shall only be granted in respect of a building which is permanently equipped for cinematographic exhibitors and *in respect of the requirements set forth in the first schedule of the said rules* (DCR,1953 and DCR 1981)*, are fulfilled.* Such annual license is to be valid for one year from the date of its issue and is renewable through application by the licensee. Rule 3(3) provides as follows:-

> *"Notwithstanding anything in the preceding sub rule, an annual licence may be granted or renewed in respect of building already licensed for cinematograph exhibitions. The cinema houses which come into existence after the issue of these rules, may be licensed only if all the provisions of the rules setforth in the First Schedule are complied with:*

Provided that the specifications mentioned in the First Schedule may be relaxed by the Administrator in any particular case to such extent and subject to such conditions as the Administrator may think fit."

The mandate of Rule 3(3) DCR, 1981 cannot be viewed in isolation. It is part of a scheme conceived by the rule-making authority under a continuing enactment, i.e. The Cinematographic Act, 1952. That Act, by Section 10 enacts that "*no person*" is entitled to exhibit a cinematograph *except through a license*.

7.66 Section 12 enjoins the licensing authority (*contemplated under Section 11*) not to grant a license unless it is satisfied that:

"(a) the rules made under this part (i.e. of the Act) (except) have been substantially applied with and adequate precaution has been taken in the place in respect of which the license is to be given, to provide for the safety of the persons attending exhibitions thereon."

Section 16 empowers the Central Government to frame rules prescribing the terms and conditions of the license providing for regulation of cinematographic exhibition, for securing the public safety. Section 17 empowers the Central Government, subject to such conditions and restrictions as it may impose to exempt cinematographic exhibitions or class of cinematographic exhibition from any provisions of that part or any of the rules made under it.

7.67 The table containing an extract of the relevant rules reproduced in the preceding part of judgment would show that, in material particulars, the concerns expressed in the DCR, 1953 are repeated in the corresponding provisions made in DCR, 1981 *vis-à-vis* safety

standards except in regard to a few details. These concerns require the licensee to conform to standards meant for public safety in the case of emergencies. Rule 10(1) of DCR, 1953 and DCR, 1981 are in *para-materia* except in regard to specific mention of the Chief Fire Officer, Delhi in the latter rules. They cast absolute obligation on the licensee for due compliance with its provisions, and conditions of licensee. Rule 12 (1) of DCR, 1953 corresponds to Rule 14 of DCR, 1981; both prescribe for pre-grant and pre-renewal (of licensee), inspection by named authorities. Part-VI of DCR, 1953 (*containing Rules 37-44)* corresponds almost in all particulars with Part-VI of DCR, 1981 (*containing Rules 39-46).* They deal with the obligation to ensure safety that fire compliance intended for use in the enclosure are in working order before the commencement of each schedule.

Para 2 of the schedule to both DCR, 1953 and DCR, 1981 are cast in the same terms. However, DCR, 1981 prescribes that a commercial block may be permitted provided safety requirements, such as independent means of escape are ensured, within the cinema hall building. Para 3, 4 and 7(1) of First Schedule to DCR, 1953 are in *para materia* with Para 8(1), 8(3), 8(4) and 8(5) of First Schedule to DCR 1981. Para 7(2) and 7(5) of First Schedule DCR, 1953 are similar to Para 8(2) and 8(5) of First Schedule to DCR, 1981. These are concerned with the norms prescribed for seating. Similarly, the gangway norms are prescribed in Para 8 (First Schedule) of DCR, 1953; they correspond with the gangway norms prescribed in Para 9 (First Schedule) of DCR, 1981. Para 9 and 10 (of DCR, 1953) which deal with entry and exit norms correspond with Para 11 and 12 of DCR, 1981.

7.68 If a comparison of the relevant sets of regulations is made, it immediately becomes apparent that the concerns sought to be addressed through DCR, 1981 are almost identical with the concerns sought to be addressed in the DCR, 1953. So viewed, the enabling power under Rule 3(3) has to be seen as the licensing authority's discretion (underscored by the use of expression "may"] in that provision. The intention of the rule-making authority, apparently, was to clothe the licensing authority with the discretion to renew licenses on a case-to-case basis provided, it was satisfied that all the safety concerns, as deemed essential under 1981 rules, were addressed. As discussed previously, these concerns – so far as the present case is concerned, were closely similar, if not entirely identical. In any event, they were not of such character as would have necessitated a drastic structural of the building. At best, the strict application of DCR, 1981 would have resulted in repositioning or realignment of certain seats within the balcony, a task or act not imposed in fact and certainly mandated by law. Therefore, the Court cannot accept the appellant's contention that since the cinema hall was built prior to DCR, 1981, the said rules did not apply to it. The adoption of such a broad argument would lead to startling result whereby stricter standards made applicable for public safety mandated by law makers, as essential for the use of public places, are relieved to certain class of building. Standards, whenever spelt-out are uniform; there is no question of a set of regulations working in a time wraps in relation to older owners of buildings or establishments and another set of safety standards applying to establishments or buildings

constructed later. This conclusion is supported by the fact that the relevant part of Act empowering licensing to such establishments begins with a mandate to the licensing authorities to ensure that at all times, safety norms are satisfied (Section 12). The acceptance by the Court, of the Appellant's contention would mean that at no given point of time, even those standards – which are dynamic in nature, can be different having regard to the age of the establishment. In matters of public safety, such an interpretation, though novel and ingenuous, would spell disaster.

7.69 The first document relevant for consideration regarding the state of balcony would be Ex.17/DA, a completion certificate issued by MCD on 10.04.1973. The license under the Cinematograph Act, was issued on 24.04.1973 Ex.17/DB. The statement of conditions was attached to the said licence in accordance with the Second schedule to DCR 1953. The scrutiny report, which preceded the said completion certificate, *inter alia* deals with the auditorium; the license is marked as Annexure PW17/DX-9. The auditorium, i.e. located on the first floor measured 7839 square feet and was allotted 750 seats. The sanctioned area for the balcony was 2691 sq. feet, 250 seats were sanctioned for balcony.

7.70 Ex.15/Y-1 to Y-16 is in the series of the first sanctioned plans dated 22.03.1973. It deals with the balcony. The plans reveal that 250 seats were permitted. The plan provided for an entry from the balcony foyer, and the exits could be accessed by two staircases one

from the right side of the building and the other from the left. Upon entrance the patrons could move up to their seats. Two exits on either side of the balcony were provided for at the same level. For movement, four vertical gangways were interspersed, they also led to a horizontal gangway or a passage, facing the screen, described as "Cross Gangway". This is also reflected in the balcony plan exhibited through the trial and marked as Ex.PW-95/B-1. The Cinema Management applied for provision of additional 14 seats, apparently by converting the space sanctioned for an inspection room. They were permitted to do so by letter dated 02.11.1974 issued by the Executive Engineer, PWD. This was marked as Ex.PW 29/DF.

7.71 On 30.09.1976, a notification, marked as PW 29/DC was issued by the Delhi Government sanctioning extra seats, for various cinema halls in Delhi. The relevant portion of that notification as far as it concerns Uphaar cinema distributed additional seats; 43 seats were permitted in the balcony

> "*by adding seats in two vertical gangways and introducing new gangway in the middle in lieu of this. This alteration is to be carried out in the right wing of the balcony"*.

This resulted in a total of 293 seats in the balcony. The right side gangway was closed. A gangway 111 CM wide between seat Nos. 8 & 9, in rows A to H was created; the other three gangways remained unaffected. This shows that seats were added on the right side gangway which was completely closed and a new middle gangway was created in the right side of the

balcony. This resulted in obstruction to the right exit, which could be accessed only by patrons sitting in the last row next to it and with some difficulty by the patrons sitting elsewhere who had to turn back and walk a considerable distance. DCR 1953 did not authorize this; the 1976 Notification did not say that the entire gangway could be closed.

7.72 On 24.05.1978, Accused-2 wrote the following letter (Ex.110/AA-20). The relevant portion of the said letter is as follows :

"*May 24, 1978*

The Entertainment Tax Officer,
2, Battery Lane,
DELHI

Subject : Sanction of an additional box at Uphaar Cinema.

Dear Sir,

We are grateful to you for having sanctioned a family box for 14 persons at Uphaar Cinema quite some time back. You will appreciate that with the passage of time, the family is growing; we would, therefore, be grateful if you could kindly sanction us an additional private box comprising of eight seats.

2. We wish to assure you that the same would be strictly for personal use. The necessary drawings for the same are enclosed herewith.

3. Hope you would consider the case sympathetically and accord the necessary sanction.

Thanking you in anticipation

Yours faithfully,

For GREEN PARK THEATRES ACCS (P) LTD.
SD/-
(DIRECTOR)
Encl : 3 sets of proposed drawings."

7.73 On 19.06.1978 (Ex. PW29/DK) the Entertainment Tax Officer to whom the request for placement of additional eight seater box was made forwarded the application to the

Licensing Branch with copies of the proposed plan seeking the latter's comments and approval. On 28.06.1978, the Executive Engineer S.N. Dandona replied to the Entertainment Tax Officer, a copy of this letter was also forwarded to the Uphaar Cinema. The said letter reads as follows :

> *"The site has been inspected on 27.6.78 and the additional eight number seats as a Private Box are in accordance with the Cinematograph Rules. The plan received with your above referred letter showing the proposed additional box is enclosed herewith in duplicate duly approved."*

7.74 The Entertainment Tax officer expressed some reservation on 02.09.1978 (Ex. 29/DM). The reservation was in respect of the number of spectators who could be accommodated within Clause VI of Firsst Schedule to DCR 1953. On 20.09.1978, Shri Dandona wrote back (Ex. 29/DN) as follows:

> *"PUBLIC WORKS DEPTT (DA)*
> *No.12 (62)/Uphaar/7879 Dated New Delhi the 20/9/78*
>
> *To*
> *The Entertain Tax Officer,*
> *2-Battery Lane, Rajpur Road,*
> *Delhi*
>
> *Subject : Installation of 8 seats at Uphaar Cinema*
>
> *Sir,*
> *Kindly refer your letter No.F.2(48)/ETO/76/3260 dated 2.9.78. The installation of 8 seats in the Properietor Box at Uphaar Cinema are within clause 6 of the Ist Schedule of Delhi Cinematograph Rules, 1953.*

Yours faithfully,

Sd/-

(S.N. Dandona)
Executive Engineer,
PWD Divn. 2(DA)
New Delhi

Copy to the Licensee, Uphaar cinema Green Park, New Delhi for information

Executive Engineer."

The permission to place the additional eight seater box, which resulted in the blocking of the right side exit was granted on 06.10.1978. The said letter is in Ex. PW 69/AA.

7.75 The result of this entire exercise was that the right side exit was rendered inaccessible coupled with the complete closure of the right gangway. It is significant to notice at this stage that :

(1) The notification dated 30.09.1976 (hereinafter referred to as `1976 notification') allowed placement of seats and creation of a middle gangway. However, it did not authorize the closure of the entire right side gangway, as *that would have been violative of DCR 1953, Para 10 of the Ist Schedule.*

(2) The licensing authority as well as the Entertainment Tax Officer who authorized closure of the right side gangway and blocking of exit on the right side, with the permission to install eight seater additional family box, did not advert to any specific provisions of DCR

1953 which mandated existence of such gangway and the necessity of exits being positioned on either side.

(3) On 27.07.1979, the Delhi Administration issued a notification (hereinafter referred to as `the 1979 notification') withdrawing and canceling the 1976 notification. The result of this 1979 notification was that the cinema hall had to restore the position exiting as on and prior to 20.09.1976. This notification was exhibited during trial as Ex. PW 29/DP.

(4) This notification was challenged in writ proceedings before this Court. The court passed an entire order requiring inspection of individual cinema halls. Later by the judgment reported as *Isherdas Sahni & Bros and another Vs. The Delhi Administration and Others,* AIR 1980 Delhi 147, the writ petition was disposed of requiring the various aspects to be considered on a case to case basis, after inspection of each cinema hall, including Uphaar, and examining whether the changes proposed to be retained by the management in the seating capacity substantially complied with the DCR 1953 and other provisions of law. The relevant portions of that judgment reads as follows:

> "4. xxx xxx xxx xxx xxx
> *The authorities will also be guided by Sections 12 (1) (a) and 17 of the Act. Section 12 (1) (a) of the Act is that the licensing authority shall not grant a licence under part III of the Act unless it is satisfied that the Rules made under Part III of the Act have been substantially complied with……"*
>
> *"8.* xxx xxx xxx xxx xxx
> *Therefore, the advice of the Fire and Health authorities had to be taken before relaxation could at all be granted. We have seen at page 224 of the Paper book the report of the Chief Fire Officer. A perusal of this report shows that he was very reluctant to advise the making of relaxation in the Rules if the*

safety of the visitors to the theatres would be affected thereby. He has rightly observed as follows:-

"Even under the normal circumstances the exit facilities are seriously hampered by people rushing and it is felt that in case of panicky situation of a minor nature, the people will be put to great difficulty which may even result in stampede. In the circumstances, I feel that it would not be advisable to allow extra seats required by the Managements. In a few theatres, however, the difficulty may not be so acute. If at all any relaxation has to be considered under unavoidable circumstances, our reaction to the proposals put forward by the management of a few cinema houses may kindly be seen in the enclosure."

xxx xxx xxx xxx xxx."

"9. xxx xxx xxx xxx xxx
In our view, a fair reading of the proviso to Rule 3(3) and the conditions under which action thereunder is to be taken would show tht the relaxation granted to the petitioners was not of such a nature that it could not be withdrawn at all. As an ultimate consideration, we must point out that the petitioners have come to this Court under Article 226 of the Constitution and the extraordinary relief can be granted to them thereunder only to prevent injustice being done to them. Their conduct also should be such as to deserve an equitable relief. Since the main considerations underlying the grant of relaxation have now disappeared, it is difficult to agree with the petitioners that the impugned order of cancellation was such as could not be passed by the Government under the proviso to Rule 3(3) read with Sections 14 and 21 of the General Clauses Act.
xxx xxx xxx xxx xxx xxx"

"17.The main order has been passed during the currency of the licences. But this is inevitable. At any rate, in the light of the observations made above, the dismantling of the seats on the ground that they do not substantially comply with the Rules will be done I future after the Administration apply their mind to the question. It cannot be expected as to exactly when this would occur. It is not therefore, possible to ensure that any change in the sitting accommodation would be enforced by the Administration only at the end of any particular licensing period.

18. For the above reasons, the writ petitions are disposed of in the light of the finds given above and in the light of the observations as to the existing additional seats and as to the changes which may have to be made in them in future after the administration examine the question on merits and take steps. No costs."

7.76 It is evident that the Court's observations and findings **did not** result in quashing of 1979 notification. The cinema management including Uphaar did not acquire any entitlement to insist that benefits of the 1976 notification should be continued on a blanket basis. The authorities were enjoined to consider whether retention of seats proposed by the 1976 notification or any part was in consonance with law and if there was substantial compliance, permit such of the additions.

7.77 On 06.12.1979 the licensing department, through the DCP issued a show cause notice asking the Uphaar cinema to remove all the 100 additional seats including 43 balcony seats. This notice was exhibited and marked as part of Ex.69/AA- File. The relevant extract of the said show cause notice is as follows:

"*Balcony: 43 additional seats installed by adding seats in two vertical gangways and introducing new gangway in the middle in lieu of this. This alternation to be carried out on the right wing of balcony in contravention of paras 8 (1) (b) and 6 91) of the Ist schedule of Delhi Cinema Rules 1953".*

Hall : 57 additional seats installed by reducing the existing vertical gangways from four to three and reshuffling of the seats in contravention of paras 5(1)(b) and 6 (1) of the Ist Schedule of DCT 1953."

7.78 On 13.12.1979 the cinema, through Gopal Ansal, second appellant, Director GPT, replied to the show cause, the reply was exhibited as PW 100/AA2. It was contended that the additional 43 sets installed were within the rules without prejudice it was contended that 85 additional seats in the balcony, in the auditorium were clearly within the rules and could not be said to be violative thereof. The DCP (Licensing) Shri Amod Kant along with Shri S.N. Dandona, Executive Engineer, PWD inspected the cinema hall. Their inspection report was produced as Ex.69/CC (by order of Court dated 23.12.2004). The said inspection report reads as follows:

> *"Of the 43 additional seats sanctioned in balcony, 6 additional seats (i.e Seat No. 9 in rows A to F) and all the 56 additional seats in hall are blocking vertical gangways causing obstruction to free egress of patrons from the hall. These 62 additional seats are in gross contravention of Paras 7(1) and 8(1) of the First Schedule of Delhi Cinematograph Rules. 1953 and must, therefore, be removed. The original number of vertical gangways in the hall must be restored. The remaining 37 additional seats in the balcony were found to be in substantial compliance of the rules and may, therefore, be retained. Similarly, one additional seat on the back row in hall (i.e Seat No. A-33) has also been found to be insubstantial compliance of the rules and may, therefore, be retained. This case has been examined in the light of the observations made in the Judgment of Hon'ble High Court and it has been seen to that the specifications laid down under the First Schedule of Delhi Cinematograph Rules have been substantially complied with keeping in view the safety requirements in the cinema hall ".*

By order dated 24.12.1979, 37 seats (out of original 43) were permitted to be retained in balcony by orders of Mr. A.K. Sinha, DCP (Licensing). That order was marked as Ex.PW 29/DR.

7.79 On 29.07.1980 the cinema hall acting through the second accused Gopal Ansal wrote the letter (marked as Ex. PW100/AA7) seeking permission to install 15 additional seats in the balcony. The said letter is as follows:

> *" We now wish to bring to your kind notice that Seats No. 9 (Rows A to F), i.e., a total of six seats are causing lot of inconvenience to the patrons because of the fact that the gangway after two rows i.e H and G, suddenly widens up to an irregular size of about 64 ". The said six seats (A9 to G9) were removed under protest, although the same can be sanctioned under the heading of 'Substantial Compliance' of Cinematograph Rules. Keeping in view the inconvenience caused to the public due to the sudden break in the gangway, we would request if the same could kindly be approved. In addition to the above, we wish to apply for an additional nine seats marked G-36 to G-38, H-36 to H-38, and I-38 to I-40, since the corner as shown in red is lying vacant in the Balcony of our above-mentioned Theatre. Hope you would find the above in order and oblige us by giving the necessary sanction for a total of 15 additional seats ".*

On 20.08.1980 DCP (Licensing) write a letter to the Executive Engineer marked and produced as Ex. PW 29/DS. The said letter reads as follows :

> *The Licensee, Uphaar Cinema Green Park, New Delhi has submitted revised plan to this office for the grant of permission to install 15 additional seats in the Balcony i.e one seat each in rows A to F, three seats each in three rows at left hand side of the Balcony, as shown in the enclosed plan which may please be examined with reference to para 6,7,8,10,12,14,16 of First Scheme of Delhi Cinematograph Rules, 1953 and a detailed report may be sent to this office, at an early date with recommendations to consider the case ".*

On 03.09.1980 the Executive Engineer Shri Dandona replied to the queries of DCP (Licensing). His letter was marked as PW 29/DU. He rejected the proposal for installation of additional 15 seats, as not conforming to the first Schedule, DCR 1953 in the following terms:

"The proposal for installation of 15 additional seats in the balcony submitted by the Licensee is not in accordance with the Ist Schedule of DCR, 1953. A copy of the plan received vide your above referred letter duly rejected is enclosed herewith with the following observations:

1. The addition of one seat each in row A to F makes the total number of seats in a row as 9 Nos i.e from 9 to 17, therefore, it requires aisles on both sides against one aisel shown on the plan and as well as at site.

2. After installation of three Nos of proposes rows with three seats each i.e 38 to 40, the space left between the last row and the exit will be less than 44 " which is required under the rules.

3. The position of the exit shown between seat No. 37 and 38 to row I in the back wall of balcony is not correct as per its original position at site. The above observations were also brought to the notice of Licensee's representative Shri Malhotra during the site inspection on 2.9.80 and who also agreed for the same. The Licensee's representative after discussion has informed that he would submit the revised plans with his new proposals keeping in view the Ist Schedule of DCR 1953.

7.80 The cinema GPT Limited, through Mr. Gopal Ansal, submitted a revised proposal for addition of 15 seats on 05.09.1980 (letter marked and exhibited as Ex. PW 29/DV). The same reads as follows:

September 5, 1980

The Executive Engineer,
C.P.W.D. Division II
Maulana Azad Hospital Buildling

Subject :- 15 Additional Seats at our Uphaar Cinema

Dear Sir,

You must have been in receipt of our proposal addressed to the Deputy Commissioner of Police (Licensing) vide our letter dated 29th July, 1980. In

continuation of the same, we are enclosing herewith revised plan for the said 15 additional seats as per your requirement.

Hope you would find the same in order and accord us the necessary sanction.

Thanking you in anticipation.

Yours faithfully,
For GREEN PARK THEATRES ASSOCIATED PVT. LTD.
SD
(DIRECTOR)

Encl : As above
CC : The Deputy Commissioner of Police (Licensing)
MSO Building, 4th Floor, Indraprastha Estate, New Delhi
Fire Officer, New Delhi
Together with the plans.

In reply Mr. Dandona, Executive Engineer, PWD, after considering proposal submitted his report through Ex. PW 29/DX after 10.09.1980 in the following terms:

"The total number of seats at present in the balcony are 287 and by adding these 15 seats the total number of seats in the balcony would be 302. The number of exits at site at present are three in number. As per First Schedule of DCR, 1953, the number of exits should be one per 100 seats and on account of which seats would be in excess, but at the time of removal of additional seats in October, 1979 during a meeting held in your room where D.C.P and Chief Fire Officer were also present, it was decided that keeping in view the High Courts' orders for substantial compliance 1% excess number of seats over the required number of exits should be allowed and accordingly so many cinemas were allowed to retain one per cent excess number of seats than the permissible limit of one exit per 100 number of seats. Keeping that decision in view these two number of excess seats can also be allowed and the proposal of 15 additional seats will be in conformity of Delhi Cinematograph Rules, 1953 and therefore, it is approved. The approval is subject to the final inspection after the completion of work ".

The Deputy Commissioner of Police (Licensing) on 04.10.1980 (marked and exhibited as Ex.PW 29/DY) allowed installation of these proposed additional 15 seats in the balcony, stating as follows:

> *" Permission is hereby accorded for the installation of 15 additional seats in the Uphaar Cinema i.e. two additional rows each of three seats in front of exit in the balcony, one seat against back wall adjacent to Seat No. 37 and 8 additional seats in the balcony by adding one seat in row A to H by making readjustment of seats in these rows. The permission is provisional subject to the final inspection by Public Works Department. The seats may be installed strictly in accordance with the plans approved and these should be inconformity with the First Scheme of Delhi Cinematograph Rules. "*

Accordingly, 15 additional seats were installed as per the seating plan Ex. PW 95/B4. Prior to issuance of the letter Ex. PW 29/DY, the Chief Fire Officer expressed his agreement with the proposal on 08.09.1980. That letter was produced as Ex. PW 29/DZ, the relevant part of which are extracted below:

> *"Kindly refer to your letter No.13811/DCP/Lie dated 27.8.80 regarding installation of proposed 15 additioal seats, as per revised plane received from the cinema management. They have proposed two additional rows, each of 3 seats in front of the exit in the balcony. One seat is proposed against back wall adjacent to sent No.37. They have also proposed 8 additional seats in the balcony by adding one seat in row A to H this will be done by making readjustment of the seats in these rows.*
>
> *The proposed additional 15 seats are I conformity of First Scheme of DCR – 1953 therefore this department has no objection to the grant of proposed additional seats."*

7.81 In 1983 two serious fire accidents took place in the city; one at Shakur Basti and another was in Gopala Tower. Consequently the Lieutenant Governor of Delhi directed

inspection of all cinema houses. A joint team of officials inspected various cinema theaters including Uphaar. Their report listed 11 irregularities which has been extracted in Table (1) in the preceding part of this judgment.

7.82 On 29.06.1983 Uphaar license was suspended for four days by orders of DCP (Licensing). He required that deviations listed in the report be removed within the said period of four days or the license would be revoked. Similar orders were made against other cinema houses. Uphaar cinema as well as the other cinema theaters approached this Court questioning the orders suspending the license. This Court by its order dated 28thJune, 1983, stayed the operation of the orders of suspending the license. By the order dated 25th March, 1986, the Court confirmed the interim order. While doing so it noticed the concern expressed on behalf of the Delhi Administration, by its counsel and recorded as follows:

> *"If there is any Fire hazard or no proper fire fighting equipments, the respondent will be at liberty to call upon the petitioner to remove the fire hazard or to use proper adequate fire fighting equipments and also call upon the petitioner to remove serious irregularities, if any. If the petitioner fails to comply with the same, the respondent will be at liberty to move the Court for variation of the said order and for obtaining appropriate directions in this behalf."*

The material part of the above order has been extracted in the inspection report dated 02.05.1980, marked and exhibited as Ex. PW 37/K.

7.83 After the developments noted above, concerning the inspection of the cinema house in 1983, suspension of its license and the interim order of the court, the material on record shows that no annual license was issued to the cinema house. It continued to function on the strength of two months duration temporary permits issued between 1983 and 1997.

7.84 PW 2, PW 29 and PW 39 spoke about the deviations in relation to the balcony. The relevant extracts of their reports have been collected in the form of Table (2), in the preceding part of the judgment.

The deviations in the balcony, from their reports are listed below:

(a) Conversion of inspection room into 14 seater box.

(b) Provision of 8 seater box, which closed the balcony exit adjoining the very stair case (i.e. right)

(c) 4 gangways were originally sanctioned of 3 feet 8 inches each. As on date of the incident one of them had been reduced to 1 feet & 10.5 inches.

(d) Closure of the entire right side gangway

(e) Provision of one extra exit on the left side at a lower level in the balcony to satisfy the numerological requirement of 2 exists. However, this was not in conformity with DCR 1953 and 1981, since two exists were to be provided on either side of the balcony leading to independent stair case.

(f) Placement of six seats in front of the newly created exit, which caused obstruction.

(g) Operator rest room and a single room tenement for sweeper were converted into a retiring room along with office and attached toilet.

(h) Four exhausts fans opened in front of the stair case instead of opening outside to an open space.

(i) Obstruction by a reception of M/s Sarin Associations on the stair case leading to terrace.

7.85 The materials on record in the form of the inspection reports Ex. PW 2/A, 29/A and 39/A, as well as the sitting plan sanctioned produced before the court Ex. PW 95/B4 would disclose the following:

(1) As against the original 250 seats proposed, 302 seats (excluding 22 seats, which were part of two additional blocks) were discovered in the balcony. Para – DCR 1953 and Para – DCR 1981 required that one exit had to be provided for every 100 seats. The increase of 15 additional seats proposed on 05.09.1980 by the cinema should have also resulted in increase in the number of exists. However, the cinema management did not provide for an additional exit. It sought to rely upon the letter Ex. PW29/DX, which stated that if the increase was less than 1% and therefore, in substantial compliance of the Rules. The judgment of this Court in *Isherdas Sahni case (supra)*, as the extracted portions disclosed, clearly preserved, fire safety

concern, expressed by the authorities. Section 17 enables only the Central Government to exempt the operation of any norm specified in rules. There was no rule or regulation in existence in 1980 or even thereafter which authorized the suspension of Para. In so far as it insisted upon provision for an additional exit, after the number of seats increased to 300. Equally there is no similar provision enacting that a deviation which is less than 1% could be waived or condoned or exempted by the licensing authority or even recommended by the Executive Engineer. If viewed from the context of the observations of the Division Bench, this omission was a clear violation unsupportable by law, and, therefore, an illegal omission.

(2) One exit i.e. right exit was closed by installation of a family box in 1978. Although the accused rely upon a permission accorded in this behalf, there is no escape from the fact that this clearly contravened Para 10 (4) of DCR 1953, which was similarly enacted in Para 12 (4) of Ist Schedule to DCT 1981. These unequivocally mandated that exits from the auditorium were

(a) to be suitably placed;

(b) along both sides and

(c) along back thereof.

(3) The cinema also had to create two or more different thorough fares or open space from which there was, at all times, free means of rapid dispersal. The placement or installation of the additional 8 seater family box violated these norms in

both respects. Firstly, it completely shut out means of rapid dispersal from the right side, at that side i.e. providing access to the right side stair case. Secondly, it also blocked the back side exit on the right side. The provision for a separate exit on the left side, at the same level where the right side exit was blocked, did not alleviate or relieve the serious concern which para 10 (4) sought to redress i.e. rapid dispersal in both directions, through independent stair way leading to outside the building. This blockage resulted in exits being concentrated in one direction thus driving patrons to what the Chief Fire Officer had apprehended while reporting to this Court in the proceedings leading to the decision of the Division Bench.

(4) The provision for an additional left side entrance in the opinion of the court did not relieve the cinema hall of its primary obligation to ensure due compliance with Para 10 (4) and 12 (4) of DCR 1953 and 1981 at all times nor did it amount to substantial compliance with the rules.

(5) The complete blockage of right side gangway, also added to the hindrance of patrons who could not get down from different levels. This also violated Para 10 (1), DCR 1953 which mandated that exits would be provided to afford audience ample means of safe and speedy egress.

(6) The provision of a gangway which was less than 44" (3 feet or 8") and was 1 ft X 10.5" amounted to contravention of Para 8 (1) of DCR 1953. This norm provided that gangways of not less than 44" width to be provided each side of auditorium. The

reduction of this gangway reduced the number of proper gangways to three, which was contrary to DCR 1953/1981.

(7) The provision of 7 seats, due to the proposal by the cinema management on 05.09.1980, which was eventually granted on 04.10.1980, resulted in 7 seats obstructing the left side exist and causing hindrance to free movement. If one considers that this exit was newly created in lieu of the blocked right side exit, it was incumbent on all to ensure that it was kept completely unobstructed, at all times. The placement of these 7 seats narrowed the passage and inevitably constricted free movement of the patrons in the event of an emergency. This violated Para 8 (4) DCR 1953.

(8) The blockage of the right side exit from the balcony by installation of an 8 seater box rendered substantially ineffective the mandate of Para 9 (1) DCR 1953 which prescribes that at least two stair ways of each not less than 4 Feet had to be provided for the access in gallery or upper floor in the building which is intended for use by the public.

7.86 In view of the above discussion, this Court is of the opinion that the seating in the balcony, changed from time to time i.e. in 1976 by closure of the right side gangway; placement of 8 seater family box for the owners in 1978, installation of 37 seats and additional 15 seats in 1979/1980, contravened several important provisions of DCR 1953 &

1981. So far as applying standards of DCR 1981 are concerned, the contraventions had already taken place by October 1980, therefore, it would really not be of much consequence. What is however significant is each deviation had the effect of substantially increasing the risk to such a point that in the event of an emergency - be it by fire or otherwise, necessitating rapid egress or dispersal of those within the balcony, these deviations and placements of additional seats would invariably and almost certainly have resulted in obstruction to such a free passage. In this sense, it would be necessary here to emphasis that regulations concerning exits which have been discussed in this part of the judgment are generic in nature and do not concern themselves with only fire emergency, but all kinds of eventualities requiring rapid dispersal of patrons and others within the balcony. Even the use of expression "fire" has to be understood in this context to mean an emergency, no more, no less.

7.87 In view of the above discussion, the trial court's findings that the arrangements of the seats and placement of additional 8 seater family box and other deviations, amounted to contravention of several provisions of DCR and Cinematograph Act are sound and supported by the facts on record.

Condition of the DVB transformer and the 1989 fire incident

7.88 The prosecution case against two sets of accused, i.e., accused No.1&2 and accused employees of DVB, was of gross negligence in relation to location and maintenance of the

transformer. The materials on record were held sufficient to return a finding of guilt against both sets of accused. The former were convicted of having committed an offence under Section 304-A read with Section 14 of the Cinematograph Act, 1952 and also Sections 337, 338 and Section 36 of IPC. DVB employees, on the other hand, were convicted under Section 304 IPC read with Sections 337 & 338 as well as 36 IPC.

7.89 Before discussing the relevant findings under arguments made, it would be necessary to briefly notice the standards spelt out by law in this regard. In the first part of this judgment, this Court had analyzed the evidence and held that the positioning of the transformer and permitting it to be installed was a voluntary action, without any element of coercion, and without authority of law since no permission was obtained in that regard from the MCD or the licensing authority.

7.90 Chapter 4 of Indian Electricity Rules, 1956 (hereinafter referred to as Electricity Rules) deals with the general safety requirements Rule 29 prescribes that all electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected worked and maintained in such a manner as to ensure safety of human beings, animals and property. Rule 29 (2) states that unless and otherwise provided the

relevant code of practice of the Bureau of Indian Standards including National Electrical Code had to be followed; Rule 29 (3) provides that the material and apparatus used shall conform to the relevant specifications of the BIS. Rule 30 reads as follows: -

> "***30. Service lines and apparatus on consumer's premises-***
>
> *(1) The supplier shall ensure that all electric supply lines, wires, fittings and apparatus belonging to him or under his control, which are on a consumer's premises, are in a safe condition and in all respects fit for supplying energy and the supplier shall take due precautions to avoid danger arising on such premises from such supply lines, wires, fittings and apparatus.*
>
> *(2) Service-lines placed by the supplier on the premises of a consumer which are underground or which are accessible shall be so insulated and protected by the supplier as to be secured under all ordinary conditions against electrical, mechanical, chemical or other injury to the insulation.*
>
> *(3) The consumer shall, as far as circumstances permit, take precautions for the safe custody of the equipment on his premises belonging to the supplier.*

Rule 43 prescribes that fire buckets containing dry sand and ready for immediate use for extinguishing fires, in addition to fire extinguishers suitable for dealing with electric fires, should be conspicuously marked and kept in all generating stations, enclosed sub-stations and switch stations in convenient situations.Rule 46 provides that where an installation is already connected to the supply system, it shall be periodically inspected and tested at intervals not exceeding 5 years by the Inspector or someone authorized in his behalf. Rule 50 prescribes as follows: -

> "*50. Supply and use of energy*

(1) The energy shall not be supplied, transformed, converted or used or continued to be supplied, transformed, converted or used unless provisions as set out below are observed:-

(a) The following controls of requisite capacity to carry and break the current [are placed] after the point of commencement of supply as defined in rule 58 so as to be readily accessible and capable of being easily operated to completely isolate the supply to the installation such equipment being in addition to any equipment installed for controlling individual circuits or apparatus: -

(i) A linked switch with fuse(s) or a circuit breaker by low and medium voltage consumers.

(ii) A linked switch with fuse(s) or a circuit breaker by HV consumers having aggregate installed transformer/apparatus capacity up to 1000 KVA to be supplied at voltage upto 11 KV and 2500 KVA at higher -voltages (above 11 KV and not exceeding 33 KV).

(iii) A circuit breaker by HV consumers having an aggregate installed transformer/ apparatus capacity above 1000 KVA and supplied at 11 KV and above 2500 KVA supplied at higher voltages (above 11 KV and not exceeding 33 KV).

(iv) A circuit breaker by EHV consumer:

Provided that where the point of commencement of supply and the consumer apparatus are near each other one linked switch with fuse(s) or circuit breaker near the point of commencement of supply as required by this clause shall be considered sufficient for the purpose of this rule;

….. *…….* *……* *…….*

[Provided further that for all transformers-

(A) having a capacity of 5000 KVA and above and installed before the commencement of the Indian Electricity (Amendment) Rules, 2000 and

(B) having a capacity of 1000 KVA and above and installed on or after the commencement of the Indian Electricity (Amendment-1) Rules, 2000 a circuit breaker shall be provided].

……. ……. ……. ……

(2) Where energy is being supplied, transformed, converted or used the [consumer, supplier or the owner] of the concerned installation shall be responsible for the continuous observance of the provisions of sub-rule (1) in respect of his installations.

(3) Every consumer shall use all reasonable mean to ensure that where energy is supplied by a supplier no person other than the supplier shall interfere with the service lines and apparatus placed by the supplier on the premises of the consumer.]"

Under Rule 63, inspection by the Electrical Inspector is necessary before even an application for permission to commence or re-commence supply energy is made. Rule 64 (2) and Rule 69 (a) provide as follows: -

"64. Use of energy at high and extra-high voltage- ……

(2) The following provisions shall be observed where energy at high or extra-high
voltage is supplied, converted, transformed or used: -

[(a) (i) clearances as per Indian Standard Code shall be provided for electrical apparatus so that sufficient space is available for easy operation and maintenance without any hazard to the operating and maintenance personnel working near the equipment and for ensuring adequate ventilation.

(ii) The following minimum clearances shall be maintained for bare conductors or live parts of any apparatus in out-door substations, excluding overhead lines, of HV and EHV installations: -

Highest system	*Safety working clearance*

voltage (KV)	*(Metres)*
12	*2.6*
36	*2.8*
72.5	*3.1*
145	*3.7*
245	*4.3*
420	*6.4*
800	*10.3*

Notes:-

(1) The above values are valid for altitude not exceeding 1000 Metres (m.). A correction factor of 1.25 per cent per 100 m. is to be applied for increasing the clearance for altitudes more than 1000 m. and upto 3000 m.

(2) The above safety working clearances are based on an insulation height of 2.44 m. which is the height of lowest point on the insulator (where it meets the earthed metal) from the ground.,

(3) "Safety Working Clearance" is the minimum clearance to be maintained in air between the live part of the equipment on one hand and earth or another piece of equipment or conduct on which it is necessary to carry out the work, on the other.

(4) The "Highest System Voltage" is defined as the highest rms phae to phase voltage which occurs under normal operating conditions at any time and at any point of the system. It excludes voltage transients (such as those due to system switching) and temporary voltage variations due to abnormal system conditions (such as those due to fault conditions or the sudden disconnection of large loads).]

(b) The windings of motors or other apparatus within reach from any position in which a person may require to be shall be suitably protected so as to prevent danger.

(c) Where transformer or transformers are used, suitable provision shall be made, either by connecting with earth a point of the circuit at the lower voltage or otherwise, to guard against danger by reason of the said circuit

becoming accidentally charged above its normal voltage by leakage from or contact with the circuit at the higher voltage.

(d) A sub-station or a switch station with apparatus having more than 2000 litres of oil shall not be located in the basement where proper oil draining arrangement cannot be provided.

(e) Where a sub-station or a switch station with apparatus having more than 2000 litres of oil is installed, whether indoor or out-doors, the following measures shall be taken, namely: -

(i) The baffle walls [of 4 hour fire rating] shall be provided between the apparatus in the following cases: -

(a) Single phase banks in the switch-yards of generating stations and substations;
(b) On the consumer premises;
(c) Where adequate clearance between the units is not available.

(ii) Provisions shall be made for suitable oil soakpit and where use of more than 9000 litres of oil in any one oil tank, receptacle or chamber is involved, provision shall be made for the draining away or removal of any oil which may leak or escape from the tanks receptacles or chambers containing the same, special precautions shall be taken to prevent the spread of any fire resulting from the ignition of the oil from any cause and adequate provision shall be made for extinguishing any fire which may occur. Spare oil shall not be stored in an such sub-station or switch station.

[(f) (i) Without prejudice to the above measures, adequate fire protection arrangement shall be provided for quenching the fire in the apparatus;

(ii) Where it is necessary to locate the sub-station/switch station in the basement following measures shall be taken:-

(a) The room shall necessarily be in the first basement at the periphery of the basement;

(b) The entrances to the room shall be provided with fire resisting doors of 2 hours fire rating. A curb (sill) of a suitable height shall be provided at the entrance in order to prevent the flow of oil from a ruptured transformer into

other parts of the basement. Direct access to the transformer room shall be provided from outside.

(c) The transformer shall be protected by an automatic high velocity water spray system or by carbon dioxide or BCF (Bromochlorodifeuromethane) or BTM (Bromotrifluromethane) fixed installation system; and

(iii) Oil filled transformers installed indoors shall not be on any floor above the ground or below the first basement.]

(g) Cable trenches inside the sub-stations and switch stations containing cables shall be filled with sand, pebbles or similar non-inflammable materials or completely cover with non-inflammable slabs.

(h) Unless the conditions are such that all the conductors and apparatus may be made dead at the same time for the purpose of cleaning or for other work, the said conductors and apparatus shall be so arranged that these may be made dead in sections, and that work on any such section may be carried on by an authorized person without danger.

(i) Only persons authorized under sub-rule (1) of rule 3, shall carry out the work on live lines and apparatus.]

[(3) All EHV apparatus shall be protected against lightning as well as against switching over voltages. The equipment used for protection and switching shall be adequately coordinated with the protected apparatus to ensure safe operation as well as to maintain the stability of the inter-connected units of the power system.]

64A. Additional provisions for use of energy at high and extra-high voltage- The following additional provisions shall be observed where energy at high or extra high
voltage is supplied, converted, transferred or used, namely: -

(1) Inter-locks- Suitable inter-locks shall be provided in the following cases: -

(a) Isolators and the controlling circuit breakers shall be interlocked so that the isolators cannot be operated unless the corresponding breaker is in open position;

(b) Isolators and the corresponding earthing switches shall be interlocked so that no earthing switch can be closed unless and until the corresponding isolator is in open position;

(c) Where two or more supplies are not intended to be operated in parallel, the respective circuit breakers or linked switches controlling the supplies shall be interlocked to prevent possibility of any inadvertent paralleling or feedback;

(d) When two or more transformers are operated in parallel, the system shall be so arranged as to trip the secondary breaker of a transformer in case the primary breaker of that transformer trips;

(e) All gates or doors which give access to live parts of an installation shall be inter-locked in such a way that these cannot be opened unless the live parts are made dead. Proper discharging and earthing of these parts should be ensured before any person comes in close proximity of such parts;

(f) Where two or more generators operate in parallel and neutral switching is adopted, inter-lock shall be provided to ensure that generator breaker cannot be closed unless one of the neutrals is connected to the earthing system.

(2) Protection- All systems and circuits shall be so protected as to automatically disconnect the supply under abnormal conditions. The following protection shall be provided, namely: -

(a) Over current protection to disconnect the supply automatically if the rated current of the equipment, cable or supply line is exceeded for a time which the equipment, cable or supply line is not designed to withstand;

(b) Earth-fault/earth leakage protection to disconnect the supply automatically if the earth fault current exceeds the limit of current for keeping the contact potential within the reasonable values;

(c) Gas pressure type protection to given alarm and tripping shall be provided on all transformers of ratings 1000 KVA and above;

(d) Transformers of capacity 10 MVA and above shall be protected against incipient faults by differential protection; and

(e) All generators with rating of 100 KVA and above shall be protected against earth fault/leakage. All generators of rating 1000KVA and above shall be protected against faults within the generator winding using restricted earth fault protection or differential protection or by both.]"

7.91 In the preceding section of this judgment it was concluded that the permission to install or allowing DVB to install an additional transformer which ultimately was the cause of fire, did not confirm to the sanctioned plan and was, therefore, unauthorized. The Court had taken into consideration the sanctioned plans for this purpose. The state of the transformers either of Uphaar or that of DVB before 1989 and the relative maintenance reviewed are very clear from the record.

7.92 The earliest material relied upon by the prosecution in this respect is a fire accident that occurred on 6.7.1989. According to ___, during the late evening show at 11:45 PM, the fire occurred which extensively damaged the Uphaar transformer as well as the then existing 750 KVA DVB transformer. The Prosecution relied upon Ex.PW-88/A, recovered from the Fire Department; it is a note sheet. Ex.PW-88/B is a letter dated 7.7.1989, written by the Uphaar Cinema to the Chief Fire Officer intimating about the fire in the Cinema Hall. The fire report dated 13.7.1989 by the Chief Fire Officer records the nature of the incident. It states that the fire occurred at 11:40 hrs. in the Uphaar cinema transformer at ground floor level, also tripping the D.C. Battery of the DESU transformer. The HT panel board, cable shaft and A.C.Duct of the cinema were affected. The report noted that smoke and hot gases

affected the main hall, balcony, projection and rewinding room, the screen, furniture and various offices located in the cinema complex. A report (Ex.PW-88/D) describing "serious fire" on 6.7.89 is also on record as is another report giving details of the fire and estimated loss. This document Ex.PW-88/E repeats the contents the value of estimated loss is about Rs.30 Lacs. Ex.88/F is the Seizure Memo evidencing recovery of the file containing the note sheets and papers from the Fire Department.

7.93 PW-88, Surender Kumar, Dy. Chief Fire Officer who deposed in support of the exhibits produced in the Ex.PW-88 series, stated that he was working in the Department since 1978. He was not crossed-examined by any of the accused about the fire incident of 1989. PW-48 the Additional Chief Engineer, DVB who deposed in support of the prosecution, sent his replies to queries furnished to him on 25.6.97. The covering letter and the annexure which contains specific replies dated 2.7.97 were produced as Ex.PW-48/A. The relevant part of his report 48/A reads as follows: -

> *"2. The file in question containing the relevant details with regard to HT connection alongwith provisions of erstwhile DESU transformer at Uphaar Cinema has already been sent to Deputy Commissioner, South, Enquiry Magistrate.*
>
> *3. As per our understanding and information obtained so far, none of the transformers actually caught fire. However, there appears to have been sparking, earthing of LT leads at the terminals of the transformer owned by DVB. This transformer (having a life of approximately 25 years under normal conditions of use) was installed on 09.07.1989.*
>
> *4. As per information/records traced so far, on 09.07.1989, i.e. the date of installation of the concerned transformer, Shri S.K. Choudhary was the Executive Engineer S/Stn. South Circle and Sh. V.K. Singhal was Asstt.*

Engineer S/Stn. (R.K. Puram District). However, we are ascertaining the name of the supervisors and this will be made available shortly.

5. As per the record available, on the night of 6th July, 1989, and morning of 7th July, 1989 both the transformers i.e. one placed by Green Park Theatres Associated Pvt. Ltd. (500 KVA) and by DESU (750 KVA) were burnt due to short-circuiting. The DESU transformer was replaced by another new transformer of 1000 KVA. The other transformer belonging to Green Park Theatres Associated Pvt. Ltd. was also replaced during July, 1989. The officers mentioned in reply to para 4 above were concerned only with the installation of DESU transformer (1000 KVA)."

Later on 4.9.97, PW-48 answered another questionnaire sent to him by the CBI on 28.8.97. Relevant portion of these replies, forming part of PW-49/G which reads as follows: -

"A perusal of old record indicates that the relays provided initially in the HT panels got damaged on 6/7.7.89 when fire occurred at the sub station. However, back-up protection was available both at K-84, Green Park S/Stn. And also at Grid S/Stn. at AIIMS. No record is available regarding replacement of relays after the above date.

It has already been indicated above, that the relays existing in HT panels at Uphaar Cinema S/Stn. got damaged on 6/7.7.89. Needless to mention that relays from unattended S/Stn. have been getting stolen from different sub stations all over Delhi and this activity by unscrupulous elements is causing a dent on the maintenance of the S/Stn. equipment."

7.94 The evidence on record, in the form of Ex. PW-40/B, the maintenance register seized from the DVB office, reveals that upon inspection of the DVB transformer on 22-1-1997, it was found that protection relays were missing. This was confirmed by PW-40, the Assistant Engineer for the concerned region. The relays were also missing on the date of the incident, as is evident from the following observations of the CFSL expert, PW-64, in his report PW-64/D (dated 11-8-1997):

"The transformer in question i.e DVB transformer did not have following safety measures at the time of inspection.

1. The LT side cables from the bus bar did not have clamping system or any support to the cables.
2. The earth cable of the transformer has been found temporarily fitted with the earth strip i.e twisting of earth cable.
3. There was no cable trench to conceal the cable.
4. HT panel board of transformer did not had any relay system to trip the transformer in case of any fault.
5. The Buchholtz relay system was not fitted on the transformer
6. Temperature meter was not found fitted on the transformer…"

7.95 On 25-6-1997, PW-24, the Electrical Inspector, Shri K.L. Grover, too had mentioned the absence of this equipment, in his report PW-24/A:

"8.No protection relays/system were found installed on any of the HT Breakers of the said HT Four Panel Board from where the HT supply to 1000 KVA transformer in question was fed....."

7.96 PW-24 supports his report, in the deposition. PW-26, Shri A.K. Agarwal too corroborates this evidence, about lack of protection and the Buchholtz relay system, in the transformer. PW-35 too deposed about the absence of relays; this opinion was given in Ex. PW-35/A, (dated 29-6-97) a report given after the incident. This report was supported by Professor Kothari, another expert, from the IIT, Delhi, in PW-36/A (dated 2-7-1997). The importance of these relays is apparent from the fact that in the event of a fault, they would have "tripped" and disconnected electricity supply.

7.97 On the morning of 13-6-1997, a fire broke out in the DVB transformer. This was immediately reported to the DVB; Deep Chand, Attendant, DVB, PW-41, deposes having received this information at about 6:55 AM. He claims to have sent Munna Lal (PW-47) who came back to the R K Puram Sub-station and passed on the information that one lead in LT side of DVB transformer has burnt due to which electric supply has been disrupted; he passed on information to C J Singh, the Superintendent. He proved the entry as Ex. PW 41/A, in the "No Current Complaint Register" maintained by the DVB. PW -42, CJ Singh corroborated having received information at about 7.20 hours, from the Green Park Complaint Centre and also from Munna Lal about the fire having taken place in Uphaar transformer and he along with his team reaching the Uphaar Cinema at 7.40am. On inspecting the DVB transformer he found that three leads out of 11 leads were partly burnt on the LT side of the transformer. The fault was not repairable at his level. He proved Ex. PW-42/A, the relevant part of the General Diary Break down, maintained by the DVB at RK Puram. PW-46, Junior Lineman Munna Lal, deposed having gone to the Uphaar cinema in the morning of 13-6-1997, found some fire and that insulation of one lead upto one feet and second lead upto six inches were burning and melting. He deposed to switching off the HT panel of the adjoining room, putting sand on fire and reporting the matter to his office. He went back to his office and reported to Deep Chand who passed on the information to the Break Down division. These facts are also corroborated by PW-45 Jagpal.

7.98 PW-40, Mr. P.C. Bhardwaj deposed that he received information about the morning incident at 08.00 am, and that he instructed Mr. B.M. Satija, Inspector to attend to the complaint. The Prosecution relied on the depositions of PW-40 and PW-44 in support of the case that such repairs were carried out by Mr. Bir Singh, Senior Fitter under supervision of Mr. B.M. Satija and Mr. A.K. Gera, Inspectors.

7.99 The Trial Court held that these repairs were in the form of replacements of Blue (B) Phase Cables with the aid of dye and hammer, and that the said three accused left the Uphaar premises at 11.30 am after repairing the DVB transformer. Further findings by the Trial Court in this regard were that, between 03.55 pm and 04.55 pm that day, there was a power cut/load shedding. Soon after resumption of power, there was a loud bang in the transformer room which led to the B-Phase Cable detaching itself from the Bus Bar, its subsequent de-coiling and settling on one of the transformer fins. It was found that this was preceded and followed by intense sparking and that the heat generated by the incident at that stage led to continuous sparking/arching, which resulted in a slit in the transformer radiator; in turn this led to spillage of more than 900 litres of transformer oil, which caught fire due to the sparking. The Trial Court held that transformer oil flowed out of the transformer room, setting ablaze many vehicles parked near the transformer room. The smoke from this conflagration went into the theatre resulting in death of 59 persons and grievous injury to 100 others.

7.100 The Trial Court relied upon the reports of Mr. K.L. Grover's (Electrical Inspector) report (Ex.PW-24/A) as well as his depositions. He visited the spot on 25.06.1997. The facts relating to load shedding were corroborated by Ex.24/DA. It was held that the sparking/arching most probably continued for about ten minutes (till 05.05 pm) when the AIIMS Grid Station tripped and was shut down. The Trial Court also relied upon the other reports, such as that of Mr. K.V. Singh, Executive Engineer (Electrical), PWD (Ex.PW 35/A dated 29.06.1997) deposition of the said Mr. K.V. Singh as PW-35; the report of Prof. Kothari, PW-36/A (dated 02.07.1997) and his deposition as PW-36. The Trial Court further relied upon the report of PW-64 (Dr. Rajender Singh, Director and Scientist from CFSL), being Ex.PW-64/D. This report was submitted on 27.06.1997. Dr. Rajender Singh deposed as PW-64 before the Trial Court.The Prosecution relied upon PW-40/B, a photocopy of the report of Mr. A.K. Gera regarding the repairs conducted on DVB transformer; it was sought to be proved as Ex. 108/AA.

7.101 The common argument advanced by the accused, Mr. Bir Singh and Mr. B.M. Satija, and implicitly endorsed by accused, Mr. A.K. Gera was that the prosecution could not prove the charges leveled against them. Certain contentions were raised, casting doubts on the findings of the Trial Court on the basis of evidence in regard to:

1. The nature of the repairs carried out.

2. Time of the accident.
3. Absence of any fault or negligence on the part of the said accused, since the risks of fire had been increased by negligence in regard to parking of vehicles; whether the repairs carried out could be the cause having regard to an intervening incident reported to have taken place in the building around 02.00 pm.
4. The appropriateness of the use of dye and hammer to fix the cables while attending to the complaint.
5. Whether the transformer itself was a cause for the fire or something else.

7.102 Sequentially, the first aspect in this regard would be the manner in which the complaint was attended. PW-40 deposed that he asked the three accused at 09.15 am to attend to the complaint. He proved Ex.40/A, a General Diary Register for the period from 14.05.1996 to 13.06.1997, which contained an entry Ex.PW-40/C to the effect that two 630 mm. aluminum sockets were replaced in the DVB Uphaar Cinema local transformer. He deposed that the entry was made by accused, Mr. A.K. Gera and that it contained the name of Mr. Bir Singh. PW-40 also stated that upon previous inspection of the transformer on 22.01.1997 (when it was noted that protection relays were missing), everything, including nuts, bolts, transformer oil and connections were checked.

7.103 The version of PW-40 about the three DESU employee/accused attending to the complaint was corroborated by an eyewitness, PW-44, Mr. Bhagwan Din. He was

working as Mazdoor on that day. He deposed to having accompanied Mr. B.M. Satija, Mr. A.K. Gera and Mr. Bir Singh to Uphaar Cinema at about 10.00-10.30 am. He had carried the tool box with him. According to the deposition, Mr. Bir Singh opened the shutter of the DVB transformer room in the Uphaar Cinema complex. The socket was changed with the help of dye and hammer as the crimping machine was out of order. He deposed that the entire repair work was finished within 45 minutes and after replacing the socket and connecting it to the bus bar, the transformer was switched on and electricity supply restored. He stated, in the course of cross examination on behalf of Mr. B.M. Satija, that he was not aware whether the R-phase, B-phase or Y-phase was changed. He deposed that they were working in the middle phase of the transformer and that two sockets were replaced. According to PW-44, when the transformer was switched on, there was no sparking.

7.104 It is evident from the depositions of PW-40 and PW-44 as well as Ex. PW-40/C that two 630 mm. Sockets were changed. Counsel for the accused had argued that there was no evidence to show that the B-phase sockets had in fact been replaced and that the deposition of PW-44 was explicit that the middle phase was the one concerned with repairs. It was, therefore, contended that the Y-phase socket was attended to in the morning and not the B-phase, which was the alleged cause of the accident. The said accused also relied upon the Ex.24/A, report of Mr. K.L. Grover, which had spoken about the Y-phase repair. The relevant part of Ex. PW-24/A relied upon on behalf of the accused in this regard reads as follows:-

"It was told by the representative of Uphaar Cinema present at the site that they had lodged a complained with DVB Complaint Centre regarding sparking in DVB transformer on 13.06.1997. The DVB staff attended to the complaint on the noon of that day and stated that they had switched 'ON' the transformer after replacing 2 NOS. of burnt cable and sockets of Y-phase of L.T. Supply Cables."

In the observations part of the report, it was stated as follows:-

"One of L.T. supply cable, socket N of B-phase through which the L.T. supply from transformer to L.T. ACB had been taken, was found detached from the transformer L.T. bus bar (Blue phase) and was lying by the side of the transformer radiator……."
"…….the opinion of the Ex.PW-24, after noting the observations as well as the facts reported by the Uphaar's representative – whose name was not disclosed – was clear enough, i.e. :
2. The cable end sockets of B-phase of L.T. supply cables had not been fixed properly as they appeared to have been fixed by hammer and not by crimping machine or by any other proper system. Necessary tests such as testing of protecting system as specified in specification no. 13 (B) Table-2 of IES Code 1886-1967 had not been carried out from time to time……."

PW-64, the Director, CFSL was asked specific queries as regard the accident. Query no. 8, forwarded by Ex.64/A dated 01.08.1997 was as follows:-

"8. Please examine the transformer and other electric connections/appliances and articles, items seized from transformer room and other places and sent to CFSL for examination and opine on the condition of nuts and bolts of the transformer in question in the morning of 13.06.1997 when there was spark in the said transformer at about 07.00 am which was reported to have been repaired at 11.30 am that day and also in the evening before the fire incident."

PW-64/D, the report of Director, CFSL dated 11.08.1997 as regards to query no. 8 was as follows:-

"A physical examination of DVB transformer reveals that the cables of bus bars of L.T. side did not have check nuts except one lower terminal of phase-Y and neutral terminal. The check nut of neutral terminal was found in loose condition. The blue phase single cable at the top along with cable and socket (detached cable fell down on radiator fin due to constant arching/sparking at nut, bolt portion on bus bar de-coiling effect of the cable due to weight of cable. All coupled together to eating away of metal of cable and socket resulting in U-shaped cable socket end."

PW-44 was a Mazdoor. Concededly, he did not attend to the complaint but was standing outside. His job appears to have been only to carry the tool box for the others who attended to the transformer repair. No doubt, the witness mentioned that the officers were working in the middle phase of the transformer. Further he clarified immediately that he could not see whether it was the R-phase, B-phase or Y-phase.

7.105 The totality of the evidence in this regard would, therefore, show that the repairs were carried out on the DVB transformer around 10.45 am–11.00 am on 13.06.1997 with the aid of dye and hammer. The attempt by the said accused to cast a doubt about the phase upon which such repairs were carried-out, is unfounded. Both experts, i.e. PW-24 and PW-64, who examined the transformer consistently spoke about the B-phase being detached. The evidence of PW-44 only was that he was unaware as to which phase was repaired, presumably because he stood at a distance. He clearly mentions that Mr. Bir Singh carried out repairs under the supervision of Mr. B.M. Satija. If he was within reasonable distance from the transformer room, there is no reason to assume why he would not have said that the repairs were not carried-out at B-phase or put differently, were carried out at Y-phase. The

Trial Court findings about the morning repairs being carried-out upon the B-phase are, therefore, are based on materials placed on the record and cannot be interfered.

7.106 The next question is whether use of dye and hammer, instead of a crimping machine by the accused was improper and led to defective repairs, which ultimately led to sparking and subsequent fire in the transformer. At this stage, it would be necessary to extract the reports of the three experts examined by the Prosecution.

7.107 Ex. PW 24/A, the report of Mr. K.L. Grover, the Electrical Inspector who visited the site on 14.06.1997 and submitted the *report on 25.06.1997 is as follows:-*

> *"The premises from where the fire started, as reported by the witnesses, is a Sub-station located on the raised ground floor (stilt floor), Uphaar Cinema Complex, Green Park, New Delhi. This sub-station comprises of three rooms which are adjacent to each other and there is rampway leading to the basement on the rear portion of these rooms & the space in front of these rooms was being used as a car parking lot, where number of cars in burnt condition still had been found parked.*
>
> *In the extreme left room (nearer to balcony exit stair-case) a 500 KVA, 11/0.43 KV transformer belonging to consumer i.e. Uphaar Cinema was installed and the same was being used to feed electricity to the Uphaar Cinema complex. In the middle room, a 1000 KVA,11/0.43 KV transformer of DVB was installed and had been feeding electricity to the adjoining Green Park locality exclusively and not the Uphaar Cinema Complex. In the third room, adjacent to DVB room, Low Tension (L.T.) Panel, Metering Cubicle, Battery Charger, High Tension (H.T.) four Panel Board of DVB was found installed.*
>
> *On physical examination, we found that the 600 KVA transformer of consumer was almost intact, whereas the 1000 KVA transformer and H.T./L.T. Panel*

Boards and Battery Charter of DVB were affected by the fire. On inspection of the DVB transformer, it was observed that there were two L.T. Bushings for each phase of the transformer and the Bushings of each phase had been found shorted with a common metal bar (known as Bus-Bar). There were four holes in each of the Bus-Bar mounted on the transformer L.T. Bushing. Out of these four holes, two holes were used for fixing the Bus-Bar on the L.T. Bushing Terminals and the remaining two holes were used for jointing the L.T. Cable-end-sockets with the Bus-Bar. On each phase three Nos. of single core aluminium cables of size 630 Sq.mm. had been connected for carrying electric supply from the transformer to the Air Circuit Breaker installed on the L.T. Panel Board.

On detailed examination/inspection of the 1000 KVA transformer and H.T./L.T. Panel Boards of DVB, the following observations were made: -

1. Two H.T. Bushings of the transformer were broken and the third one cracked. There were no flash marks on H.T. supply leads and H.T. Bushings of the transformer.

2. One of the L.T. supply cable-end-socket of B-Phase through which the L.T. supply from transformer to L.T. ACB had been taken, was found detached from the transformer L.T. Bus Bar (Blue-Phase) and was lying by the side of the transformer radiator.

3. There was a cavity in the B-Phase Bus-bar (around the hole from where cable got detached) of the transformer and the upper portion of the cable-end-socket which was lying by the side of the radiator also melted/burnt in a way that the centre hole of the socket took a U-shape.

4. The earth conductors connected to neutral terminal of the transformer were found disconnected near the neutral terminal. There were short-circuit marks on these earth conductors (indicating beads formation at the end of these earth conductors).

5. The neutral Bus-Bar was loose and the check nut used for tightening the Bus-Bar was also loose.

6. The P.V.C. insulation of the L.T. Cables connected to the transformer Bus-Bar were found damaged/burnt. The insulation of the cable, which was lying

by the side of the radiator, was also found almost burnt out from transformer up to L.T. Switch Room.

7. Battery Charger & L.T. Panel Board were found almost damaged with fire.

8. No protection relays/system were found installed on any of the HT Breakers of the said H.T. Four Panel Board, from where the HT supply to 1000 KVA transformer in question had been fed.

It was told by the representative of Uphaar Cinema present at the site that they had lodged a complaint with DVB Complaint Centre regarding sparking in DVB transformer on 13.6.97, the DVB staff attended to the complaint on the noon of that day and stated that they had switched 'ON' the transformer after replacing the two nos. of burnt cable-end-sockets of Y-phase of L.T. supply cables.

From the above it is evident that due to loose connection of the cable- end-socket of the B-phase Bus-Bar of transformer, there was sparking at the said connection. At that time, the transformer was 'on load' and the current supplied from the 1000 KVA transformer was passing through these Bus-Bars and at the same time, sparking was there on the B-phase Bus-Bar, thus the magnitude of the current supplied through B-phase could be large which had caused excessive heating of the transformer B-phase Bus-Bar and cable-end-socket. The excessive heating and sparking formed a cavity on the B-phase Bus-Bar and also melted the upper portion of the cable-end-socket. Due to weight of cable and decoiling effect of the cable, it might have exerted pull on the Bolt (used for fixing the cable-end-socket at transformer Bus-Bar), as a result cable-end-socket came out with a flick from the bolt portion, after formation of an opening in the cable-end-socket (U-formation of socket) and hit the transformer radiator's fin. Due to over-heating of the cable, its insulation gave-way and conductor became naked/exposed. The live conductor of this cable, which hitted the radiator-fin, formed an opening in the radiator-fin (due to short circuiting) from where transformer oil gushed out and spilled over the floor. It appeared that the short circuiting of cable with the radiator fin continued for a sufficient time, since there was no protection system provided for the transformer at the said sub-station, as a result the transformer's oil caught fire due to arcing/sparking caused by short circuiting.

At the time of inspection the following provisions of the Indian Electricity Rules, 1956 had not been found complied with by DVB: -

(1) No protection system against Over-Current, Earth Fault and excessive Gas Pressure had been found provided for the said 1000 KVA transformer of DVB installed at Uphaar Cinema Complex, so as to automatically disconnect the supply under abnormal conditions as required under the provisions of Rule 64A (2) of the said rules.

(2) The cable-end-socket of B-phase of L.T. supply cables had not been fixed properly as the same appeared to have been fixed by hammering & not by the crimping machine or any other proper system. Necessary tests such as testing of protection system etc. as specified in the specification No.13.3 (Table-2) of I.S. Code No.1886-1967 had not been carried out from time to time and as such the said transformer had not been found maintained in healthy condition as required under the provisions of Rule 65 (5) of the said rules.

The effect of short circuiting of L.T. supply cable with the transformer and subsequently catching of fire by the transformer's oil, could have been avoided, had the fault (may be loose connection etc.) in the transformer which was detected in the morning of 13.6.97, been repaired properly & also the protection relays/system which were missing, been there (on the H.T. Breaker controlling the supply to transformer in question) to protect the transformer against Over-Current, Earth Fault & excessive Gas Pressure (Buchholts-Relay)"

7.108 The report of Mr. K.V. Singh, Executive Engineer (Electrical), PWD dated 29.06.1997, i.e. Ex. PW.35/A is also corroborative. It reads as follows:-

"It was found that the transformer etc are installed on the ground floor level where the vehicle (car) parking is also in the same floor. It was noticed that HT panel installed in the sub station consist of 4 panels of which 2 panels were incoming panels & 2 panels were outgoing panels. 11 KV supply was further connected with two different transformers installed in two separate adjacent rooms. One transformer capacity is 500 KVA which belongs to Uphaar Cinema Management & Caters to their Electricity needs. The other transformer is of 1000KVA and connected from second outgoing panel of the above said HT panel. This 1000KVA transformer belongs to DVB and it was

feeding electricity to nearby area from LT panel installed in adjacent room which is same as HT room.

On the visual inspection it was found that 500 KVA transformer which belongs to Uphaar Cinema was undamaged. It is felt that the transformer was not cause of fire at least.

On the inspection of 1000KVA transformer, it was found that the transformer cover was open (it was stated to be opened by other officers who visited before us). The one part of radiator was also not available and it was stated to be taken away for further investigation by some other investigating agency. It was seen that the LT terminal box of the transformer was having 2 bushings on each phase. These 2 bushings were connected through copper bus bar. From the each phase 3 single core cables of the size 630 sq. mm was connected. The bus bar of the 'B' phase was not available and it was seen that one of the cable leads along with the socket was also not available. It was told that bus bar and part of cable lead was taken away along with radiator for further enquiry. It was noticed that the transformer tank inside was clean and as such there were no sign of smoking inside. There was no oil except a little bit of oil at bottom in the transformer tank. Apparently, it was no electrical fault inside the transformer. It was also seen that all the cable connected to the LT terminal box of the transformer were damaged and insulation of cables was heavily burnt up to the wall of LT room. The transformer room was fully dark with black smoke particle deposited on its all walls and roof.

It was noticed that earth strips were lying in the transformer room but the joint in the earth stripped was not proper. It was also noticed that the earth connection to the neutral was also broken.

<u>INSPECTION OF LT & LT PANELS</u>

The cubical LT panel was heavily burnt. The main incoming switch to the LT panel was in the form of 1600 ampere air circuit breaker. It was noticed that all the out going switches from the LT panel were without fuses. There was no sign of HRC fuses. It was not correct to use wire in place of proper use. The HT panel as has already been described above that HT panel consist of 2 incoming oil circuit breakers & 2 out going oil circuit breakers. Out of the two incoming circuit breakers one is connected to receive HT supply from nearby Ashirwad building sub station. The other incoming feeder was only for making use of standby/duplicate HT supply in case of failure of

one HT supply connection. It was seen that all these 4 oil circuits breaker were without any kind of protection against earth fault and over current. It was also found that potential transformer was in disconnected condition of OCB operation mechanism which includes the battery charger etc appeared to be defective and they were heavily damaged due to the fire. There was one metering cubical was also available.

POSSIBLE CAUSE OF FIRE

As we have seen in the photographs that one of the LT cables got disconnected from the cables from 'B' phase. It was evident from the photographs that the cable was touching the radiator fin. There was a hole in the radiator fin. There was also mark of sparking on the other fins. It is apparent after seeing the various photographs of the transformer room, cable leads and cable sockets, that one of the cable sockets got away from the nut & bolts after getting melted due to severe heat. When it disconnected from the bus bar terminal it came sliding from the fins of the radiator and caused sparking marks on the radiator fins & finally it struck one radiator fin, since heavy current was flowing due to earth fault and the temperature of the lead was very high. The radiator sheet got damaged and the hole was created in the fin because of continued arc. The transformer oil coming out from this hole must have caught fire either from the existing arc which was there due to touching of the current carrying conductor with the body of the transformer of possible burning of PVC cable insulation. This arc must have continue for some time as there was no immediate in tripping system available in the HT panel. Once the oil got fire and oil continued to come out from the radiator it was must have caused spread of fire. When oil was spreading it must have taken the fire outside the transformer room also. The fire was aggravated further by the presence of the petrol/diesel carrying vehicles parked in front of transformer room. It is concluded that this unfortunate incident of fire occurred due to possible over heating of one of the LT connections which may be due to loose connections or over current. It was further aggravated because there were no protection system was available in the HT panels installed at Uphaar cinema. It was ultimately found that the only tripping took place at 33 KV and sub station at behind AIIMS.

The fire could have been controlled, had there been any fire fighting equipment installed inside the car parking area and substation building itself.

POSSIBILITY OF SPREAD OF FIRE/SMOKE THROUGH AIR CONDITIONING SYSTEM

On the preliminary inspection at the site, it was evident that most of the fire took place only in the parking area & sub station area of Uphaar cinema and the question of possibility of spread of fire/smoke through air conditioning conduct was examined. We were told that electric supply to the Uphaar sub station was not there from 3.55 p.m. to 4.55 p.m. Electric supply to Uphaar Cinema sub station was restored at 4.55 p.m. As per the information, the tripping in the 33 KV grid at AIIMS took place at 5.05 p.m. which means that main power supply was available for a period of 10 minutes between 4.55p.m. to 5.05 p.m. On the inspection of AC plant room it was noticed that switches of the AC blower were in 'ON' position. It was also quite possible during these 10 minutes the blowers were started. To check this possibility the AHU room was inspected. The wire mash filters of the one of the AHU installed near the door were covered with black smoke. When the filters were removed the sign of smoke were also seen on the cooling coil face. Therefore, it can be said that blower might be working during those 10 minutes. The possibility of working of the blower after the tripping of supply was also examined. It was found that the main switch from generator supply which was going to the blower was without fuses and fuses of that particular switch were found inside the body of switch. The condition of fuses was such that it looked as if that the particular switch was not being used for quite a long time as fuses were covered with the dust. Hence, it can be said that blower did not work on generator supply.

7.109 PW-64, Dr. Rajender Singh was asked certain queries by the CBI and he submitted two reports Ex PW-64/B (dated 27.6.1997 and Ex-PW 64/D (dated 11.8.1997, relevant parts of which are reproduced below:

PW-64/B

"The inspection of scene of crime carried out by undersigned from 13th to 15th June, 1997 in the premises of Uphaar Grand Cinema and subsequent detailed Laboratory scientific examinations of exhibits marked 1, 2a, 2b, 3 and 5 revealed the following: -

1. The physical inspection of the scene of fire revealed two transformers in two rooms in one of the corner of the hall in the ground floor of the cinema complex. The smaller transformer situated at one of the corner room stated to be of Uphaar cinema was found intact. The other bigger transformer of 1000KV installed in the adjacent room stated to be of DVB have maximum burning effect of fire. The one electric phase cable of LT side mounted on bus-bar of this transformer has been found to be detached and fallen on ground due to constant sparking as electric sparking effects were detected on the nut and bolts bus-bar and fastener end. In the process of falling down of the detached phase cable the same has apparently come in contact with fins of radiator at many places leading to intense sparking and creating U Shape hole in one end fin of the radiator resulting in oil spill. This U-shape hole is of same dimensions as that of cable fastener. Approximately 10-12 liters of transformer oil was found in transformer.

On the basis of the fact stated above and laboratory findings it is concluded that the constant intense sparking between detached phase cable and radiator has initiated the fire and thus spreading along the oil spill.

2. The flash point of transformer oil (minimum temperature at which transformer oil catches fire) marked exhibit 1 is 158 degree Celsius.

3. The aluminum cable marked exhibit 5 reveal signs of short circuiting.

4. Facilities do not exist to find out the contents of transformer oil (exhibit1) in control earth sample marked exhibit 4."

Ex PW 64/D

The inspection of scene of occurrence of fire at Uphaar Cinema Complex by the undersigned reveal the following: -

1. The fire has started from DVB transformer which is situated in the western portion of the car parking hall situated in ground floor of cinema complex. The shutter of the transformer room opens towards the car parking lot. Thereafter, the smoke appears to have traveled in two directions i.e. northward and southward. The northward bound smoke encountered collapsible gate and a staircase adjacent to it. The smoke has gushed through stairwell due to chimney effect. The doors next to the screen on either side has severe smoke effect. The doors on either side of screen are two plank doors.

Both portions shown effect of smoke. One door opposite to this staircase was closed at the time of incident as smoke effect was observed only staircase side of the door. Another door was to the right of the above door and one plank of the door was open at the time of fire. This way the smoke had entered the auditorium through right door as one plank of the door was opened at the time of fire incident.

The southward bound smoke traveled through ariel route towards the staircase situated to the south of the DVB transformer. The ariel route is exhibited by the fact that the concrete pillars of the building do not show any signs of smoke at the bottom portion and cable hanging overhead of Uphaar Cinema complex shows signs of heat and smoke. The smoke gushed through the stairwell due to chimney effect. The rear stall foyer canteen was not effected by smoke as well as fire as the connecting door from this staircase was closed. This connecting door has strong blisters i.e. effect of smoke and temperature (heat) on staircase side of door. Hence, the smoke has gone further up the stair case and reached the foot/lower portion of balcony of auditorium. The balcony has three entrances, they are one entrance is next to this particular stairwell and one entrance is through foyer/canteen lobby and third entrance is one floor above. The smoke effect had been seen on the outside as well inside of on one plank portion of door next to this stairwell, leading to foot of the balcony. The smoke has entered the balcony through this half open door. The connecting door to the foyer/canteen from this staircase was closed. Hence, this door had effect of smoke and heat on outside portion. Further the smoke has gone up and effect of smoke was detected on entry door to the rear portion of balcony. The doors from the foyer canteen side to the auditorium and balcony were closed at the time of incident. Out of four doors from rear stall side, three doors of double planks have been forcibly opened from the inner side of Cinema Hall.

***Regarding query 3**: The transformer in question i.e. DVB Transformer do not have following safety measures at the time of inspection.*

1. The L.T. Side cables from the bus bar do not have clamping system or any support to the cables.

2. The earth cable of the transformer has been found temporarily fitted with the earth strip i.e. twisting of earth cable.

3. There was no cable trench to conceal the cable.

4. H.T. Panel Board of transformer do not have any relay system to trip the transformer in case of any fault.

5. The Buchholtz Relay system was not fitted on the transformer

6. Temperature meter was not found fitted on the transformer.

***Regarding query 4**: The sequence of event of fire has already been reported vide report No.CFSL-97/P-337 dated 27.6.97.*

***Regarding query 6**: The inspection of scene of occurrence i.e Uphaar Cinema Complex reveal that the ground floor basement i.e. car parking lot has been effected by fire and rest of the cinema complex is effected by smoke.*

***Regarding query 7**: No emergency light system could be detected in the auditorium and balcony of Cinema Hall at the time of inspection.*

***Regarding query 8**: The physical examination of DVB transformer reveal that the cables on bus bars on L.T. side did not have check nuts. Except one lower terminal of phase Y and neutral terminal. The check nut of neutral terminal was found in loose condition. The blue phase single cable at the top along with cable-end-socket (detached cable) fell down on radiator fin due to constant arching/sparking at nut bolt portion on bus bar, decoiling effect of cable and weight of cable. All coupled together led to eating away of metal of cable end socket resulting in U shape cable socket end.*

***Regarding query 4**: (Chemistry portion) The Laboratory examination of fire extinguishers reveal the following: -*

Sl. No.	*Type*	*Quantity*	*Exhibits*	*Condition*
1	*Water type (Gas pressure)*	*8*	*6(a) to 6(e) 6(f) & (g)*	*Empty Not in working order Working*

			6(h)	*order*
2	*Carbon dioxide type*	*6*	*6(i) to 6(n)*	*Working order*
3	*Foam type*	*3*	*6(o) to 6 (q)*	*Empty*
4	*Dry Powder type*	*3*	*6(r) & 6 (s)* *6(t)*	*Not in working order* *Empty*
5	*Soda acid type*	*2*	*6(u)* *6(v)*	*Leakage at top* *Empty*

7.110 PW-24, PW-35 and PW-64 supported their reports about the necessity of using a crimping machine and the dominant cause of the electrical fire being the defective crimping through the aid of dye and hammer. PW-26, Mr. A.K. Aggarwal, Assistant Electrical Inspector also deposed that the cables and socket were not fixed by crimping but with dye and hammer. He further deposed that according to the rules, all conductors of XLPE terminators are to be terminated either by crimping, compression or by welding methods.

7.111 The relevant IS Code 1255 of 1983 reads as follows:

"Clause 12.6 Aluminum Conductor Connection
12.6.1: There are number of methods of jointing Aluminum Conductors. Four Standard methods which are commonly used are:
a) Fluxless Friction solder method
b) Soft Soldering method using organic fluxes
c) Welding method
d) Crimped or compressed connection

12.6.2 Fluxless Friction Solder Method- In this method each strand of the conductor is carefully cleared and scraped with scraper tongs to remove oxide film. Then all the strands are tinned by rubbing a special friction solder stick over the heated strands. This is known as metalizing. Aluminium conductor thus prepared may be soldered on to copper cable lugs, ferrule, terminal studs using 60 percent solder. No flux is used in any of the operation. This method is not recommended for jointing conductors in XLPE cables.

12.6.3 Soldering Method using organic Flux

12.6.4Welding Method Welding Method gives the best possible results. Welded conductor joints have lesser resistance and equal or better mechanical strength than the conductor itself. Welding, therefore, should be given preference for all larger cross sections. For smaller cross section welding may not always be feasible or economical. In this method the end of the stranded conductor are first welded to the cable lug, terminal stud or to each other, in openor closed mould using aluminium welding rods or strands taken from conductor. After cooling welded connections are filed smoothened and cleaned.

12.6.5Crimped or Compressed Connections- In this method conductor and lug ferrules are pressed together firmly by means of tools and dies to form a joint. The methods normally used are indent compression, hexagonal compression or circular compression. Tools and accessories should meet the requirement of relevant Indian Standards where available."

7.112 It had been contended by the accused that Clause 12.6.1 and 12.6.5 only speak of crimping cables; what was done here was to join cables with the transformer. Counsel submitted that the materials and evidence led before the trial court fell far below the standard required for it to conclude, beyond reasonable doubt, that there was defective fixing of cables, by reason of a crimping machine not being used, and also that there was insufficient evidence to prove that a crimping machine was available, but was not used.

7.113 As far as the standards for fixing cables, are concerned, all experts on the subject, i.e PW-24, PW-35, PW-36 and PW-64 consistently spoke that the cables were not fixed or "crimped" by using crimping machines. In the course of cross examination, the consequence of such "improper" fixing was spelt out by PW-24, who said that it would result in lack of uniformity in the fixing the socket with the cable. He specifically mentioned that his inspection showed that two sockets were loose, and fixed by hammering on the B-Phase and the detached socket was one of them. These witnesses are independent; in fact PW-24 had visited the site at the earliest opportunity. There is no reason to disbelieve their testimony. It was open to the accused to cross examine them, and suggest that crimping was not the only method, and to have pointed out to other norms, in support of the argument that such cables could have been joined with sockets, and fixed to the transformer bus bar, with the aid of dye and hammer. They could have suggested that use of such dye and hammer were not prohibited, or were standard practices. Such a suggestion was made only to one witness, i.e PW-67, but not to any expert; certainly not to PW-24 and PW-64. Similarly, the lack of awareness of the standard, or its description by PW-73, does not discount the testimony of the experts, who speak of the accident, and the cables having been joined improperly and being a major cause of the accident, leading to the fire.

7.114 PW-40, PW-48 and PW-73, all speak about existence of crimping machines with the DVB. An argument was made by accused that PW-40's evidence cannot be accepted, since he was under a scanner. Reliance is placed on the circumstance that PW-40

was suspended; that he had inspected the same transformer on 22-1-1997, and was, according to the evidence of PW-48 responsible for its maintenance. Therefore, the court, it was argued, could not have relied on his testimony in this regard. Reliance was placed on *State of UP-vs-Harban Sahai,* (1998) 6 SCC 550 to say that overdependence on opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases

7.115 As held by the trial court and observed earlier, the cable socket was not crimped with a crimping machine; it was joined with the help of a dye and hammer. The charge against accused was that they used this method, instead of using a crimping machine, which resulted in the accident, and led to the death of several people. Several experts spoke about adoption of this alternative method of joining the cable end, with the socket, which was fastened to the transformer bus bar. They also deposed that this cable had detached, and due to improper joining or its not being crimped, it melted into a U shape, and settled on a transformer fin. The availability of crimping machines has been spoken to by witnesses. Even if the contention regarding unreliability of PW-40 were to be accepted, at face value, the other officials, i.e PW 48 and PW-73 speak about crimping machines being available. It is therefore, held that the cables had not been joined properly, with the aid of a crimping machine. The court is also of the opinion that there is no variation between the testimony of

eyewitnesses and opinion of the experts, or any conflicting nature of evidence of the kind cautioned against by the Supreme Court in *Harban Sahai* (supra).

7.116 The accused had sought to propound an alternative theory that fire was not caused at the transformer end, but for unknown reasons, in the parking area. For this purpose, they urged that the timing of the accident was not 4-55 PM or thereafter, but earlier. The fire, it was urged, engulfed the vehicles negligently parked, and led to the transformer catching fire. It was also urged that the prosecution version about the fire emanating from the transformer is beset with other inherent improbabilities, borne out of the record, which undermine its case against the DVB accused, entitling them to an acquittal.

7.117 It was contended that the prosecution failed to prove conclusively, whether the fire actually started due to the alleged faulty repair of the transformer. Learned counsel suggested that overheating of the transformer and the cables could have been the source of the fire. He stated that though the upper portion of the radiator and the edges were examined by the experts for signs of short circuit, the cable core and the conductor were never examined. He relied on the deposition of PW 35, who opined that the fire could also have been caused due to over current, due to an earth fault, in which case too the wire could have got detached and recoiled on the transformer fin. Further he had deposed that the tripping at the AIIMS grid took place due to over current. He also deposed as to how insulation material

on the wire could have burned or some other material in the transformer room could have caught fire. The expert witness further stated that the fire could have started in the parking lot and later spread to the transformer room. Reliance was also placed in his observation as to how if there were protection relays, the accident could have been avoided as there would have been immediate tripping. Further, he sought to place reliance on the observations of PW 64, that fire could have been caused due to external sources also.

7.118 Counsel relied on the statements given by PW 24, that there was sand in the transformer room floor, which is also affirmed by PW 48. He stated since there was sand, the oil would have soaked in it. PW 48 also states that the transformer room level was lower than the parking lot; therefore, counsel contends that no oil could have flowed out. Moreover, the temperature at which the transformer oil vaporizes is 140 degree Celsius, whereas the actual temperature in the transformer room at that time was far higher and consequently it should have vaporized instead of spilling out of the room.

7.119 Central to the DVB employees'alternative theory of source of fire propounded, is the argument that its timing was earlier than one found by the trial court. For this purpose, the testimony of PW-14 (who talked about the fire breaking out at around 4-30PM or 4-45 PM); the deposition of PW-54, a tenant at Upahaar complex, who stated that he saw the fire at about 4-45 PM, and the statement of PW-59, that he heard a loud bang at 5-

00 PM, are relied. The argument also was that the fire would have started much earlier than 4-55 PM, since it spread into the cinema hall by 5-00 PM and that if the prosecution version is correct, according to PW-64, it would have taken at least 10-15 minutes of sparking for the socket to detach from the transformer. If so, it is surmised, the transformer oil spillage would have occurred much later, and smoke could not have entered into the cinema hall by 5-00 or 5-05 PM, as held by the court.

7.120 Now, the evidence relied on by the trial court, about the occurrence of the incident, was the General Diary Register of DVB, PW-43/A, which recorded about the incident at 5-00 PM, the log sheet of DVB 33MV Grid Station at AIIMS, Ex. 24/DA and document Ex. PW-96/E, which records that the fire brigade office was intimated at 5-10 PM that day. The note sheet in the office of the Chief Fire Officer, marked as Ex. PW-49/E is also to this effect. PW-1 and 3 mentioned about the fire having occurred about 10 minutes after the interval; PW-52 deposed having informed Shri K.L. Malhotra at 4-55 PM. PW 47 Baljit Singh, a DVB Junior Engineer deposed about load shedding in the Green Park feeder from 15.55 hours to 16.55 hours; the relevant entry, made in the Log Sheet dated 13.6.97, was marked as Ex. PW 24/DA. PW-47 stated that the electric supply to Green Park feeder tripped off at 17.05 hours, and that he passed on that information to the South Circle, endorsement was made on it, and signed by other officers who were present there.

7.121 The argument of the DVB accused about the alternative possibility of fire having occurred due to another cause, and not in the transformer, largely premised on surmises and deductions sought to be made from depositions of certain witnesses, is sought to be supported by the testimony of PW-64, who stated that it would have taken 10-15 minutes for the cable to detach and fall on the transformer. Apart from the argument questioning the timing of the fire, it was urged that fire could have resulted in the transformer, for a variety of reasons, such as earth fault, overheating or over-current.

As observed earlier, the documentary evidence establishes that there was a power cut for one hour, between 3-55 and 4-55 PM. Only two witnesses speak about a fire before 4-55; they state having noticed it around 4-45. It is a matter of record that the AIIMs grid recorded tripping, (due to absence of protection relay in the transformer) at 5-05PM. It is also a matter of record that the incident was reported to the DVB office at 5-00 PM. PW-24, in his deposition, to a specific query, states that the melting of socket and falling of a cable would depend on variable factors, and it might have occurred in 5 or 10 minutes. These show that:

i) There was a one hour power cut, till 4-55 PM;

ii) Electricity supply continued for ten minutes; after 4-55 PM;

iii) Due to tripping at the grid, at 5-05, there was power shut down at the Upahaar cinema complex and DVB transformer.

iv) Intimation about fire was made at 5-00 PM.

v) All experts, i.e PWs 24, 35, 36 and 64 located the source of fire in the transformer, specifically due to the cable falling on the transformer fin. PW-36's opinion, (recorded in Ex PW-36/A) is that:

"2) A line to ground fault has occurred on LT side due to one of the lead having fallen on the radiator fin. This fault has been cleared by the protection relays located at grid sub-station at AIIMS. During the conversation I came to know that the plug setting of the relays were 5 A and time multiplier setting (TMS) = 0.05. With these settings the fault must have been cleared in a very short time of the order of a fraction of a second. During this period the heavy short-circuit current must have caused damaged to the radiator fin leading to creation of a hole. The oil leaked out through this hole. Since there was no damage to the winding of the transformer , one can confidently say that the duration of the fault must have been very short.
3) The leaking oil must have caught fire either due to the arcing or some unknown cause."

vi) The report of PW-64, ie. Ex. PW-64/D says that:

" The physical examination of DVB transformer reveal that the cables on bus bars on LT side did not have checked nuts. Except one lower terminal of phase Y and neutral terminal. The check nut of neutral terminal was found in loose condition. The blue phase single cable at the top alongwith cable end socket (detached cable) fell down on radiator fin due to constant arching/sparking at nut bolt portion on bus bar, decoiling effect of cable and weight of cable. All coupled together led to eating away of metal of cable end socket resulting in U-shape cable socket end."

vi) According to PW-35/A, one LT cable of the transformer of 1000KVA transformer had broken away from the terminal and had fallen on the radiator which caused line to ground fault and also caused heavy flow of the current which caused hole in their radiator and resulted in spilling of transformer oil

and the transformer oil which spilled on the ground, due to hole in the radiator. Fire had taken place because of arching which had taken place in the cable which had fallen down and this was the cause of fire. There was heavy smoke in LT and HT rooms and carbon deposits were there, LT and HT panels had no fuses.

vii) PW-35, in his deposition, states that creation of a hole on the transformer could occur due to a variety of factors, and that it could take place even within one second.

viii) PW-35 clearly says that if there were an earth fault, even that would have resulted in the earthing tripping at the Grid section, at AIIMs. However, the tripping indicated an over-current, which was due to lack of protection relay. If such safety measure were present, there would have been a shut down, instead of an over current.

7.122 A cumulative reading of the evidence would reveal that according to DVB and the fire department records, the fire incident was reported at around 5-00 PM. Though there are some variations in the versions of witnesses, this court is of opinion that the findings of the court about the nature of the accident cannot be held to be without basis. All experts have uniformly spoken about the manner in which fire started and spread. The attempt of the accused to say that fire started somewhere else, or for some other reasons, is purely

conjectural; they do not seem to have put it in the cross examination of any witness. Similarly, though an attempt was made to elicit facts relating to the flash point of the transformer oil (140 degrees Celsius) no suggestion was put to any witness, or expert who deposed in the trial, that the fire did not take place in the manner opined by them, as such melting of the transformer fin or body would have taken a long time. The line of questioning of witnesses was not to suggest that the source of fire was something other than a transformer, or that it was due to over-current. If the alternative theory about the fire were a reasonable one, the least that the defense could have done was to lead evidence of experts, in that regard, or produce materials, in support. They chose to do neither. The experts evidence on the other hand, is categorical that the faulty joining of cable led to intense sparking, resulting in the blue phase cable detaching itself and falling, after sliding down, on the transformer fin. The intense sparking, according to them, resulted in melting of the cable insulation as well as the socket end, resultant constant sparking and arching. Both PW-64 and PW-35 say that such intense sparking and arching can lead to slit (rupture) of the transformer. PW-35 even says that such melting, due to arching can take place within a few seconds. In the light of these statements, and the state of the transformer, as seen by these experts at the relevant time, (which was also photographed by PW-61) it is concluded that the cause of fire was, as found by the trial court, namely the blue phase cable at the top along with cable end socket falling down on the radiator fin due to constant sparking at nut bolt portion on the bus bar; the de-coiling effect of cable its weight of cable, together led to “eating away” (corrosion

or melting) of metal of cable end socket, resulting in U shape cable socket end. This in turn caused a slit in the radiator fin through which transformer oil gushed out in the form of spray, caught fire and spilled on to the transformer room floor. This flowed outside the transformer room. The argument about the fire being the result of earth fault was refuted by PW-35. On the face of these materials, the contention by DVB accused about the fire having emanated due to some other cause, or due to other electrical causes, unrelated to the repairs of the transformer in the morning of 13-6-1997, cannot be accepted; the trial court's findings are held to be based on materials and evidence on record.

ACCIDENT AND SPREAD OF SMOKE:

7.123 The Trial Court found that the fire in the transformer room soon engulfed several cars parked nearby, which in turn led to thick black smoke. The Court held that this smoke, being hot and light moved upwards; the movement was accelerated by the "Chimney Effect", caused by low pressure in one part of the building and high pressure in other. The Court further held that the smoke travelled from the first floor, into the auditorium from the back of the screen and through the staircase, blistering the doors on the first floor and finally entering the second floor, into the balcony from the left side. It was also held that this smoke which eventually took the lives of 59 people and grievously injured 100 others, composed mainly of transformer oil and other combustible material, including petrol, were so toxic, that

sustained and continued exposure for about 20-30 minutes could have naturally caused death and in fact did so.

7.124 As discussed in the previous part of the judgment dealing with transformer and accident, PW-24, in his report Ex.PW-24/A, stated that loose connection of cable-end-socket of the B-phase transformer bus-bar led to intense sparking, causing its detachment. The transformer was on load at that time and current supply from the 100 KVA transformer was passing through bus-bar. The magnitude of the current supply through the B-phase could be large causing excessive heating of the B-phase and the cable-end-socket. This led to a cavity on the B-phase bus-bar, melting the upper portion of the socket. The weight of the cable and its decoiling effect might have exerted pull on the bolt; as a result, the cable-end-socket detached with a flick from the bolt portion after forming an opening and hit transformer radiator's fin. Due to cable overheating, its insulation gave away and the conductor was exposed. The live conductor which hit the radiator fin, found an opening due to short-circuiting from where the transformer oil gushed and spilled-out on the floor. The short-circuiting appeared to have continued for sufficient time. The transformer oil thus caught fire due to arching/sparking.

7.125 PW-35 who prepared his report Ex.PW-35/A, after inspecting the cinema hall on 19.06.1997 supported the findings of PW-24. PW-36, as noticed earlier, also said much the same thing. As to the cause of spread of fire and smoke, PW-35, in his report PW-35/A, after inspecting the site stated much the same conclusions as PW-24. Further, the spread of fire was described in Ex.PW-35/A where it states that the spillage of transformer oil continued; it went outside the transformer room. The fire was aggravated, according to PW-35/A, by presence of petrol, diesel oil parked in vessels of transformer room. The reason for spread of fire, according to PW-35/A, through the air conditioning system was that between the period when electricity supply was restored at 04.55 pm and at 05.05 pm, when it was shut down as a result of tripping in AIIMS grid, there was a possibility of the air conditioning blowers having started. On inspection of the AHU (Air Handling Unit), it was found that the filters installed there near the door were covered with black smoke. After removal of filters, it was found that the 'cooling coil' face also showed traces of smoke. Ex.PW-35/A, the report, states that the blower might have been working for ten minutes. It further states that the AC blower was in ON position and concluded that the condition of the generator room was such that there was lot of dust indicating its disuse and that the blower was not working on the generator at the relevant time. The next witness was PW-25, who inspected the site. He noticed black smoke from the transformer room going to the staircase area. He also mentioned in cross-examination that cars were parked in the parking area which too showed traces of smoke. He deposed that wind must have come through the grill gate to the parking

area and then through the staircase and it led to smoke prevailing in that direction due to 'Chimney Effect'. According to PW-25, when a fire occurs, it results in high pressure in a slightly high area and low pressure at a lower height. Wind blows from higher to lower levels. He deposed that part of the smoke had travelled through AC ducts. He mentioned that there was a small opening of 45 cm. dia at the roof of the ground floor responsible for the spread of smoke to the first floor through AC tunnels. This was also mentioned in his report, Ex. PW-25/A.

7.126 PW-64, in his report had given the opinion that fire started from the transformer room situated in the western side of car parking area on the ground floor. He stated that smoke appears to have traveled in northward and southward direction. The northward bound smoke encountered a collapsible gate and staircase adjacent to it. The smoke gushed to staircase due to 'Chimney Effect'. Two plank doors on either side of the screen showed severe smoke effects. The door opposite the staircase was closed; it also showed smoke effects. The smoke entered according to him, into the auditorium through the right door as one plank was open. Southward air traveled through the aerial route towards the staircase south of the DVB transformer room. This, according to PW-64 was due to concrete pillars not showing any sign of smoke in the lower portion and the cables hanging overhead showing signs of heat and smoke. Rear stall canteen was not affected by smoke or fire, since it disclosed strong blisters. The smoke, therefore, had gone up and reached the lower portion of auditorium balcony. The smoke effect had been seen on the outside as well as inside one

plank portion of the door next to the stairwell leading in to the lower portion of the balcony. The smoke entered through this half-opened door. The door connecting fire canteen from the staircase was closed. This showed smoke and heat effect from the outside portion. Smoke went up and its effect was detected on the entry door to the rear portion of the balcony. The doors from the fire canteen to the auditorium were closed at the time of the incident.

7.127 Among the eye-witnesses, PW-3, Mr. Raman Kumar deposed having noticed smoke emerging from the air-conditioner duct. He managed to leave the theatre but could not enter the hall due to dense smoke. Mr. Rishi Arora, PW-7 felt gases in the rear stall after interval and felt suffocation due to smoke and gases. PW-11 also noticed lot of smoke and gas after the interval. He also deposed having encountered smoke in the lobby and having lost consciousness. According to the witness, nothing was visible due to smoke. PW-8, Amit deposed having noticed that after lights went out, some smoke arose before the screen.

7.128 PW-63 also deposed noticing fire in the DVB transformer. He noticed smoke in the stairs and lot of gases on the top floor. Similarly, PW-27, 49 and 52, all mentioned about fire and smoke in the parking area of the building. PW-49, the Chief Fire Officer deposed having reached the cinema hall complex at 05.45 pm, and entered the balcony area. According to his deposition, there was thick black smoke and lot of heat. The balcony fire door could not be opened and had to be forced open by his officers.

7.129 Ex.PW-49/E is a fire report prepared by PW-49. According to the document, a call reporting fire was received at 05.10 hours in the Delhi Fire Control Room from PCO. Four fire tenders were requisitioned from nearby places. The earliest tenders, with one ambulance reached the fire scene at 05.16 hours. The first unit reached at 05.21 hours and started fire-fighting operations. On receiving a message, four motor tenders, two motor pumps along with two hydraulic platforms were sent at 05.27 hours. The fire was declared to be of medium category due to the number of persons trapped in the hall, at 05.31 hours, by the officer incharge of the scene. Fire fighting operations were strengthened by the responding seven water tenders, two light vans, hose tender, water pump and two mini buses with manual power, at 05.32 hours. The Dy. Chief Fire Officer and Asst. Divisional Officer also rushed to the scene. The fire was declared as of serious category at 05.50 hours with eight water tenders, one Bronto, one ambulance, two motor pumps and one hose tender. The Chief Fire Officer also rushed to the scene. The report stated that there was heavy traffic in the road leading to considerable delay in the fire engines reaching the site of the accident; the fire was brought under control at 06.20 pm and rescue of the last person completed at about 07.45 pm.

7.130 The prosecution had, for the purpose of proving composition of substances seized soil samples through Ex.PW-70/X on 29.07.1997. These included soil samples beneath

leakage point of the DVB transformer; middle-point distance of about 3 ft. from the starting point where oil was said to have leaked from the radiator, from outside the transformer room about two-and-half feet away from the shutter base. Again, another sample, four feet away from the shutter base and right side of the bottom of the wall near a car which was in completely burnt condition, was recovered. One soil sample was collected 7 ft. away from the transformer room in the right direction underneath a burnt car and one sample was collected from a burnt scooter near the staircase. These samples were sent as Ex.S(1) to S(15), to the CFSL. The report of Director, CFSL, Ex.PW-64/D adverted to a chemical analysis report forthcoming on a later date. Ex.PW-83/A was the report prepared by K.S. Chabra, Senior Scientific Officer-cum-Assistant Examiner, CFSL, relating to the samples. He deposed having examined parcel nos. 4, 5, 7 and 8 containing transformer oil, Ex.P-6, petrol, Ex.P-7 and soil samples taken from the site. In his deposition and the report, the witness stated that there was presence of petrol in Ex.P(2). Ex.62/A, the report of forensic science experts headed by PW-62, Dr. T.D. Dogra mentioned about the 41 persons being brought dead to AIIMS. Specifically, the report, Ex. 62/C, prepared by a panel of doctors, mentioned about the death of two persons, namely Srishti, on 19.06.1997, due to carbon monoxide poisoning and Amarpal, on 29.06.1997, due to smoke inhalation injury chest infection, *Septicemia,* acute renal failure, *acute liver* necrosis and *Leptospirosis.*

7.131 The report, Ex.62/C, which was in answer to query nos. 2 and 3 through letter dated 05.09.1997, read as follows:

> *Q.2. The copy of the postmortem examination report enclosed and the report of the CFSL may please be examined and opinion be given about the smoke and the gas which had caused the death of the persons who were affected by the fire in Uphaar Cinema on 13.06.1997.*
>
> *Q.3 Opinion may please be given on the contents of the smoke and the type of gas which could have emerged from the fire as mentioned above and effect of the same on the human body.*
>
> *Ans. 2&3. After considering the postmortem examination report in respect of deceased M.S. Bhinder conducted at Army Hospital, CFSL report and the report of the scene of occurrence, the Board is of considered opinion that the gases produced in such a fire shall depend upon the nature of items burned. The possible items which may have been burnt were likely to be made of rubber, polyurethane, polyvinylchloride, acrylonitrile-butadiene styrene, petrol, diesel & nylon. The product of combustion of such items may contain carbon soot, hydrocarbons (saturated+unsaturated), carbon-monoxide, carbon dioxide, sulphur dioxide, hydrogen sulphide, nitrous oxide, hydrocyanic acid, hydrochloride, vinylchloride, phosgene, ammonia, aldehydes etc. The photo copies of relevant literature from the Text Book of Medical Toxicology and Goldfrank's Toxicologic Emergencies are attached herewith as Annexure.III & IV for ready reference. All these gases are toxic gases having either systemic toxic effect and/or pulmonary irritant effect. The item wise products of combustion are given below:*

Item	*Products of combustion*
Rubber	*Hydrogen sulphide, sulphur dioxide*
Polyurethane	*Isocyanates, cyanide*
Polyvinylchloride	*Hydrogen chloride, phosgene, chlorine, carbon monoxide, carbon dioxide*
Nylon	*Ammonia, cyanide*
Polyacrylonitrile	*Cyanide*

Among them, the most common cause of smoke inhalation related deaths is carbon monoxide, which is a systemic toxin with no irritant properties. In the postmortem report of deceased Shri M.S. Bhinder, lungs are described to be exuding 'pinkish fluid' on sectioning and compressing of lungs. Such a finding can be seen in Carbonmonoxide poisoning."

The report also stated that there were no burn injury or other cause of suffocation.

7.132 Ex. PW 25/A is the report of Shri T.P. Sharma. It stated that:

"Since the fire load, which is responsible to the growth and spread of fire was in the form of cushion seats, tyres, petrol/diesel, transformer oil and cable besides other materials like wood etc. The nature of the flammable material and their amount with low ventilation has resulted in the burning which can be categorised as partial burning or burning as a result of defficient oxygen supply. This has resulted in the high smoke generation evolving the toxic gases (alongwith carbon dioxide gases) like carbon monoxide, hydrocloric, (HCL) gas, cynogen gas (HCN), Sulphur dioxide etc. The later these gases may be in very low concentration but they are highly toxic to cause fatal injury."

The report further outlined toxicants, their sources, their effects and the estimate of their short term lethal concentrant. They included hydrogen chloride, other Halogen acid gases, sulfur dioxide, (SO2) Hydrogen cyanide (HCN), Nitrogen dioxide, and other dioxides of nitrogen, ammonia. It further says that:

SO2 results in damage of mucos, is extremely pungent and leads to death due to 1) asphyxiation 2) cardio respiratory disorder.
H2S is extremely dangerous to mucos membrane.
NH3 is extremely dangerous to mucos membrane. Inhalation of strong concentration may lead to immediate death from direct vagal inhibition.
Irritant(gases) may be chloride, aldehydes phosgene, vinyl monomers etc. They result in deaths due to pulmonary complications & respiratory tract damage. Presence of particulate further enhances these effects.

Particulates. They carry toxic products on them(absorbed) and penetrate deeper in lungs.

In reply to another question, PW-25, in his report, stated as follows:

"9. How did the people die and what could be the effect of the gas/smoke on them. May please see the copy of the post mortem report in respect of Capt. M S Bhinder and please comment on the nature of gas which had caused the death. A:People might have died
due to :
Lack of oxygen
Carbon monoxide(CO) inhalation in large quantity resulting in impaired cardiovascular function, high COHb percentage.
CO2 increases respiration rate thus resulting in increased inhalation of toxic products of combustion.
HCN- due to histotoxic anoxia in which normal cellular
metabolishm is prevented from occurring due to the enzyme inhibition. Asphyxia results as oxygen is not effectively utilized.
(Documented cases in which HCN alone is considered to be primarily toxic in fire are rare)"

7.133 The appellants' contended that the toxicity of gases and the fatality caused by them was not proved; they termed the trial court's findings "conjectural". The discussion of the above material would disclose that medical experts' evidence, in the form of Ex. PW-62/C was clear as to cause of death of two victims, who were brought in on that day, though who died later. The board, which gave its opinion, also examined the autopsy report of Capt. Bhinder. Ex PW 77/A, the autopsy report, says that the cause of death was declared as Asphyxia. The relevant extract of that report, prepared by the Command Hospital, and seized by Ex. PW-77/B, is as follows:

"... 3. Pupils fixed and dilated. Cornea hazy.

C. INTERNAL EXAMINATION
a) ALIMENTARY SYSTEM
Mouth, pharynx and esophagus.
Frothy blood mixed fluid with blacking particles preSent. Mucosa of pharnyx congested
2(a)
...
(d) RESPIRATORY SYSTEM
e1. Nose, nasopharnyx, larnyx, trachea, and bronchi mucosa of nasopharnyx, larnyx, trachea and brochi parched and congested. Frothy blood mixed fluid with black particles present in the lumen.
(F). SALIENT AUTOPSY FINDINGS
1. Congestion and oedema of larnyx trachea and bronchi
2. Evidence of pulmonary oedema
3. Foreign particles in respiratory tract
(G). CAUSE OF DEATH
Asphyxia ....."

7.134 The AIIMS constituted a medical board, consisting of Prof. T D Dogra, Dept. of Forensic Medicines, (PW-62) Prof. S K Sharma, Dept. of Medicines, Prof. R.K Khazanchi, Dept. of Surgery, Dr. Praveen Aggarwal, Associate Professor, Dept. of Emergency Medicine, Associate Prof. L R Murmu, Dept. of Emergency Medicine, Associate Prof. Dr. Shakti Gupta, Dept. of Hosp. Admn. Dr. Shakti Gupta, member secretary, Dr. Arun Sahu, the then Deputy Director. The experts arrived at a unanimous report, and answered the questions posed by CBI. The relevant part of the report, in relation to Questions 2 and 3 has been noticed above; it unambiguously states that the post mortem report of Capt. Bhinder showed that lungs were described as exuding 'pinkish fluid' on sectioning and compressing of lungs and that such finding could be seen in carbon monoxide poisoning. Ex. PW-108/N is a test

report of the CPRI, pursuant to submission of the samples, by CBI, to it, on 29th October, 1997. The sample was of transformer oil; it mentioned that the flash point of the sample was 149 ^{O} C, with methane content @ 2 PPM (parts per million); ethane @ less than 1 PPM; ethylene @ 2 PPM; acetylene @ <1 PPM Carbon dioxide @ 545 PPM and Hydrogen @ <50 PPM. The total gas content per ml of oil was 10.72 ml. Ex. PW-83/A was the Gas Liquid Chromatography test, on samples S-1(1) to S-1(5). They were said to have higher volatile fractions. Ex. S(2) was said to contain petrol. The volatile fractions of both were the same.

7.135 A criticism of the accused appellant was that the trial court's findings are in the absence of any supporting materials about the nature of toxic gases, and that they caused fatalities or injuries. No doubt, some deficiencies can perhaps be perceived in the investigation. For instance, the prosecution does not appear to have collected soot samples from the cinema hall, or balcony, which could possibly have assisted in further precision about composition of the gases and smoke which entered the balcony. They also do not appear to have meaningfully co-related the observations in some expert reports with the exhibits. However, the court has to see whether these shortcomings undermine its case about the cause of fire, cause of smoke in the balcony and the resultant death of patrons. The ocular evidence of several witnesses (PW-1, 3, 7,8, 11, 12, 63, 27, 49, 51,52, 57 and 59) establish the following:

(1) Spread of smoke from the DVB transformer;

(2) Cars parked in the ground floor, in the passage meant to be kept free, catching fire;

(3) Thick smoke entering the balcony;

(4) Choking and suffocation of those in the balcony;

(5) Presence of fire and hot smoke in the ground floor from 5-05 to 6-20 PM.

(6) The balcony had smoke even as of 5-45 PM;

7.136 The evidence of PW-24, PW-35, PW-36 and PW-64 as well as their reports establish the manner whereby the smoke sped and spread on to the upper floors (first floor, second floor-including balcony- and top floor) of the cinema building. The reports PW-83/A and 108/N mentioned about composition of transformer oil and petrol. The report PW-25 detailed, on the basis of observations – including the burnt cars at the site, the composition and toxicity of various substances, which were burnt by the fire. Soil samples had been taken near cars and other vehicles; more than one witness spoke about several cars having been lit up by fire. The substances mentioned in PW-25/A, and described above, were highly toxic. PW-62, who headed the medical board, that submitted the report Ex. PW-62/C clearly mentioned the cause of death of two patrons. It was said that Shristi, a victim, died on 19th June, 1997 due to carbon monoxide poisoning; the causes of death of Amarpal (who died on 29-6-97) were several, including smoke inhalation injury, chest infection, septicemia, acute renal failure. Examination of PW-77/C, the autopsy report of Capt. Bhinder, according to the medical Board, showed that the cause of death was due to carbon monoxide poisoning. The

board also wrote about the effect of the gases burnt, due to the transformer and vehicles catching fire; according to it, the effect of these gases is rapid as the fatal period for carbon monoxide with ten percent concentration is within 20-30 minutes; the fatal period of hydro-cyanic acid is 2 to 10 minutes, sometimes immediately. Therefore, combined effect of various toxic gases produced during combustion of the above-said material could have caused rapid death of the victims.

7.137 One argument made by the accused appellants was that there was no evidence to support the conclusion that smoke entered the balcony, through air conditioning ducts. It was urged that the experts' reports did not support this theory; on the contrary, Ex. PW-35/A expressly stated that the air-conditioning system was not using the generator.

7.138 According to PW-35/A smoke went through the air conditioning duct. He however, found that air conditioning blowers were not connected through generator supply. He, therefore, blowers were not working and the smoke did not travel through air conditioning duct, after the fire, the blower should have stopped working but it did not. The supply was restored between 4.55 to 5.05 and during that period, the blowers were on which enhanced the speed of smoke inside the cinema hall. These observations were premised on his seeing that the blower was in the "ON" position when the A/C unit was inspected by him. PW-25, in his report Ex. PW-25/A states this:

".....The smoke, travel through staircase NO. 3, was again responsible for the faster spread in the first floor auditorium area through the door provided at the base of the podium of the screen. Similarly the small opening of about 45 cm dia at the roof of the ground floor was also responsible for the spread of the smoke at the first floor through A.C. Tunnels....."

7.139 PW-3 mentioned about smoke entering the balcony, through the air conditioning ducts. The evidence of PW-35, PW-25 and PW-3, therefore, is to the effect that the air-conditioning was not linked with the generator system. However, the blowers were in the "ON" position; they started immediately after the electricity supply was restored at 4-55 PM, and continued to blow, till shut down consequent to tripping, at 5-05. In the meanwhile, the smoke caused by fire in the ground floor, spread through the staircase, into the cinema hall and balcony; it also entered the balcony, through the air-conditioning tunnels.

7.140 The findings of the trial court, therefore, about the cause of fire in the transformer room, vehicles catching fire, spread of smoke into various parts of the building and the manner of spread of smoke, choking of patrons due to hot smoke, their sustained exposure, for 30-45 minutes, to such smoke, are based on sufficient materials; the prosecution has been able to establish its case on this score. The doubts sought to be expressed are not of such a character as to undermine the findings.

Statutory clearances/approvals and position of inspection concerning fire safety

7.141 Cinema theatres in Delhi were being licensed after inspection by various authorities. These included inspection by the Public Works Department (PWD), the No Objection issued by the MCD and clearance by the Fire Department. After these clearances the appropriate authority i.e. the SDM used to issue the annual or temporary licenses as the case may be. With the coming into force the Delhi Police Act, 1978, the responsibility of issuing licenses became that of the Police Commissioner; he designated the Deputy Commissioner of Police (DCP) in that regard. The procedure adopted by the DCP (Licensing) was to call for clearances by the PWD, MCD and the Fire Department and thereafter proceed to pass necessary orders. In this section it is proposed to examine the role of various statutory/licensing agencies and the individuals working in such agencies, arrayed as accused, while granting the clearances.

7.142 The first agency in this regard would be the Licensing Department. While considering the nature of deviations, particular those in the balcony, various letters and correspondences exchanged between the PWD through Mr. S.N. Dandona and the concerned DCP (Licensing) Mr. Amod Kanth were discussed. It would be relevant at this stage to notice the evidence and materials adduced by the prosecution with regard to the role of the Licensing Department. The prosecution relied upon inspection reports dated 8.4.1977; 16.11.1977, 22.5.1978, 28.3.1979, 7.3.1980, 25.3.1981, 10.3.1983, 26.4.1985, 20.5.1987 and 19.5.1990, among other inspection reports. These were all parts of Ex.PW-69/AA, the file

seized from the office of the PWD. These inspection reports are stereo typed and have repeated year after year the same observations. Interestingly the reports for inspection dated 23.2.1978 and 28.3.1979 specifically say that no side gangway was provided in the balcony due to new seating arrangements. However, those observations do not find mention in the later reports. Two other irregularities noticed in relation to gangway is that instead of 1.20 metres, mentioned in the inspection report, the width of 3 gangway is mentioned as 1.15 meters. The inspection report also speaks about one existing water tank. The inspections are completely silent about existence of two transformers in the ground floor and that they were located near the parking lot.

7.143 The above evidence would show that Licensing Department continued to issue clearances periodically in a mechanically manner. In the part concerning deviations found in the balcony, this Court had held that there were several breaches of DCR 1953 such as Para 8 (1), First Schedule; para 8 (4), First Schedule DCR 1953 which mandated that exits and gangways leading to exits shall be kept clear of obstructions as well as Paras 10 (1), 10 (2), 10 (4) & 10 (a). Besides, the Court noticed several other violations. The closure of the exit from the right side by permitting installation of 8 seater box, obstruction of the additional exit permitted on the left side by allowing several seats to be placed, narrowing of a gangway, all amounted to serious contraventions of DCR 1953 and DCR 1981 which compromised the safety norms. The Licensing Inspectors/PWD officers did not apparently even deem it

appropriate to consider the fire safety angle having regard to the location and capacity of the second DVB transformer and its proximity to the parking lot.

7.144 In the circumstances, it is held that the Licensing Department, which authorized issuances of approvals and NOCs did so mechanically; they also acted contrary to the DCR 1953 while permitting and continued approval for closure on right side gangway; closure of the right side exit; narrowing of a gangway and the other violations discussed in the earlier part of the judgment.

7.145 The second aspect concerning safety of the building and the DVB transformer located within it. Here it becomes necessary to examine, to scrutinize the inspection reports by the Electrical Inspectors. Three such inspection reports, namely, PW-24/DB (dt.6.6.95); PW-24/DC (dt.21.5.96) and PW-24/DW (dt.6.5.97) are material. Each of these was issued by the office of the Electrical Inspector, under the Electricity Act. They all clearly mentioned that there was no objection if the license of the Cinema were renewed.

7.146 Now, it is a matter of record that in July, 1989, a fire had occurred in the Cinema Hall. The facts relating to that incident were discussed in a separate part of this judgment. Record discloses that approval had been granted by the Electrical Inspector for installation of the Uphaar Cinema 500 KVA transformer in substitution of the burnt transformer. However, no such corresponding permission was granted in respect of the DVB

transformer; the DVB in fact increased its capacity from the existing 750 KVA transformer (which caused damage due to the fire) to 1000 KVA transformer.

7.147 In his report PW-24/A listed several norms which were flouted in regard to the installation of the second transformer. They included absence of protection relays in the DVB transformer to guard against over current, earth fault and excessive gas pressure. He state that this violated Rule 64-A (2) of the Electricity Rules. Ex.64/D by Director, CFSL observed that the DVB transformer also showed other deficiencies such as absence of cable trench to conceal the cable; no temperature meter fitted on the transformer; lack of Bush Holtz relay system, no clamping system or support to the cable.

The above would shows indifference by both the DVB in regard to the maintenance of the transformer as well as omission by the Electrical Inspector's representatives who visited the Cinema Theatres for annual inspection. Although the inspections were of the Uphaar Cinema Transformer, Court cannot lose sight of the fact that the inspection was to be in terms of the DCR 1953 & DCR 1981. The paramount consideration of the Cinematograph Act and the norms stipulated by DCR 1953 and 1981 were fire safety of the building being used as a cinema hall. The officials and employees who inspected the Cinema did so for the ostensible reason of considering the fire safety and security of the Cinema Halls in the context of the equipment, construction and manner of use of the building. The location and use of the second transformer even if unauthorized surely did call for comment. That the Electrical

Inspector's representatives did not deign even to comment on the existence of the transformer much less inspect it from the fire safety angle points at their colossal failure in this regard.

7.148 The third agency which issued no objections at the relevant time was MCD. It has been held in the previous part of this judgment that ever since 1983 when the Licensing Department stopped issuing annual licenses, the Cinema was issued temporary two months' licenses. The Trial Court after considering the evidence of the prosecution in the form of testimony of PW-22 Veerbhan Sethia and documentary evidence such as Ex.PW-69/AA, 69/BB, 69/CC & 69/DD concluded that temporary permits were issued for the period 1.2.1995 to 31.3.1995, 1.4.1995 to 31.5.1995, 1.6.1995 to 31.7.1995 and 1.8.1995 to 30.9.1995. The Trial Court also held that though NOC by the MCD was not of any relevance, it was issued on 20.9.1995, six months after the previous license had expired on 31.3.1995. Similarly it was held o n the basis of PW-23's evidence (who spoke about the NOC for the period 1.4.1996 to 31.3.1997) and upon consideration of Ex.PW-23/A and Ex-PW-2/AA-27 (that Department had no objection in renewing the license for the period 1.4.1996 to 31.3.1997), that for both these periods, there was no inspection by the MCD and the concerned employees approached the matter in a mechanical manner recommending issuance of NOC. The Court also held that Ex.PW-2/AA-27 NOC was handed over directly to Mr. K.L. Malhotra instead of being routed through the Licensing Department.

7.149 Ex. PW 39/DA is a letter dated 20.4.1995 to the Zonal Engineer Building, MCD from the DCP (Licensing). The letter was marked to one Jr. Engineer Mr. Sherawat. It was subsequently marked to the Administrative Officer Mr. Shyam Sunder Sharma on 4.5.1995. The noting of Jr. Engineer on the letter was that the matter pertained to the Licensing Department; on 28.9.1995, the said accused merely stated that if aggeed MCD could issue NOC for the renewal of licenses. In the circumstances, NOC Ex.PW-2/AA-26 was issued on 28.9.95. The original NOC was handed over directly to accused K.L. Malhotra on 28.9.95 by Shyam Sunder Sharma. Neither the noting, nor any other document on the record discloses that the NOC was preceded by any inspection or enquiry. It appears to have been issued merely for the asking. The entire sequence of facts leading to issuance of this NOC was narrated by PW-22.

7.150 Ex PW-23/PA is a letter dated 11.3.1996 by the DCP (Licensing) to the MCD concerning the NOC to be issued by the latter. The MCD received a letter dated 19.9.96 (Ex.PW-23/DB) seeking no objection from the annual renewal of license for the year 1996-97. The said letter itself contained a noting by Mr. N.D. Tiwari recommending issuance of NOC. Pursuant to this, Mr. Bharat Bhushan, PW-23 made a noting on 23.9.97 and Ex.PW-2/AA-27 NOC was issued by M.D. Tiwari, Administrative Officer to the DCP (Licensing) till period 31.3.1997. The sequence of events was corroborated by the testimony of PW-23. On the basis of the above material, the Court held that the concerned authorities had violated

Rule 14 of DCR 1981. The allusion here appears to be to Rule 14 (1) (a) which concerns itself with examination on structural features of the building for the purpose of reporting whether rules "thereto" have been duly complied with.

7.151 The last aspect to be considered by the Court is the nature of fire safety inspections carried out by the concerned authorities i.e. the Fire Department. Before the factual discussion on this score, it will be necessary to briefly summarize and wherever necessary extract the relevant norms. DCR 1953 by Para 16 of the First Schedule required provisions for fire extinguishing appliances suitable to the character of the building and of a pattern, class and capacity approved by the licensing authority. It also prescribed that such appliances were to be readily available for use in case of fire in any part of the building. Para 16 (2) set out that sufficient means for dealing with the fire should always be readily available within the enclosure including a damp blanket and portable chemical fire extinguishers and two buckets of dry sand. Para 16 (3) enjoined that all fire extinguishing appliances were to be maintained in proper working order at all times and available for instant use and that chemical fire extinguishers were to be capable of withstanding a pressure of not less than 250 lbs. Square inch. Para 16 (4) prescribed that all fire extinguishing appliances were to be in charge of some person or persons specially appointed for that purpose "*who were not to do any other work during an exhibition which would take them away from the building or otherwise prevent them from being immediately available in case*

of danger or alarm of fire." DCR 1981 by Rule 39 prescribed that the Cinematograph Operator had to satisfy himself before commencement of every performance that fire appliances intended for use within the enclosure were in working order; it also mandated that such appliances were to be in the charge of some person specially appointed for that purpose. The duty of such person was to ensure that the appliances were kept constantly available for use. Rule 40 prescribed that the enclosure would be in charge of a qualified operator holding a certificate granted by the Electric Inspector and not being less than 18 years of age. Rule 42 mandated the operator incharge to satisfy himself that all cables, leads, connections and resistances and fire extinguishing appliances in the enclosure are in proper working order. Paras 8 & 10 of DCR 1953 as well as the paras 9 & 12 of DCR 1981, discussed previously elaborately with the issues concerning nature of gangways, size exits, their locations and numbers etc. These are also material and as held in this judgment are crucial for understanding the vital concern express by the rule making authorities that in the case of an unforeseen emergency – fire or any other serious emergency, threatening the safety of the patrons, or personal safety of the patrons, speedy and easy evacuation could be facilitated. Additionally DCR 1981 para 18 of the First Schedule outlines the precautions against fire; every permanent cinema was directed to store two cisterns connected with fire service in the Cinema, each of 1,135 liters of water capacity for every 100 individuals of the public to be accommodated in the cinema. Para 18 (2) prescribed that all cinemas shall be provided with requisite number of hydrants/hose reels (not less than two) to be fixed by the licensing

authority. Para 18 (3) prescribed that fire buckets would be housed and the manner of its use. Para 18 (4) mandated that portable fire extinguishers of an approved type as required by the Licensing Authority were to be placed on brackets 1.20 m. from the ground. Such extinguishers were to be refilled, well cleaned or re-charged every 12 months; records of the same were to be kept for inspection. Para 18 (5) stated that two pressures type fire extinguishers, two buckets of water, one bucket of sand and blanket were to be always placed inside the enclosure. A large sponge was also to be kept in one of the bucket of water and one fire extinguisher was to be kept immediately outside the enclosure. Para 18 (6) provided that portable fire extinguishers and fire buckets of approved type shall be provided as directed by the Chief Fire Officer in respect of air-conditioning plant room, electrical sub-stations, rectifier room etc. Para 74 of the First Schedule to DCR 1981 mandated that where the supply of current is derived from the special plant on the premises, such plant must in all cases be approved by the Electrical Inspector. Para 76 stated that electrical accumulators unless installed in rooms of compartments specially reserved were to be completely enclosed together with terminals in substantial casings constructed of or lined with insulating and fire resisting material. Para 77 stated that transforming and converting machinery with controlling switches and cut-outs were to be placed in a fire proof and water proof structure, adequately ventilated to the outside air properly and accessible to the management and to be used for no other purposes. Para 77 (2) stated that

> *"No transformer which under normal conditions of total heats to above 130 degree F shall be used and the transformer circuits shall be so arranged that*

in no circumstances may a contact between the primary and secondary coils be established."

7.152 The MCD Bye Laws of 1959 through Bye Law 75 prescribed standard for ventilation in staircases; Bye Law 76 regulated means of egress from building. Bye Law 98 elaborated the standards which certain public buildings including theatre hall were to follow. Bye Law 98 (4) (i) stated that every such building was to be constructed of fire resisting materials throughout. It prescribes standards of ventilation through Bye-Law 98 (4) (l) as 1000 cubic feet of fresh air per seat per hour. The 1959 Bye Laws were repealed and in 1983 new set of Building Bye Laws were enacted and brought into force. Bye Law 17.1 of the 1983 Bye Laws provided that buildings were to be planned, designed and constructed to ensure fire safety in accordance with part-IV of fire protection of National Building Code of India. It also provided that in case of certain specified kind of buildings mentioned in Bye Law 6.2.4.1 (i.e. those with the height of more than 15 meters), the Chief Fire Officer had to clear the building scheme. Bye Law 17.2 mandated that additional provisions relating to fire protection of building more than 15 meters in height were to be followed; those additional provisions were prescribed in Appendix 'K'. Appendix 'K' – 8.4 prescribed the standards for which transformers were to comply to. In case transformers were housed in the building, separate fire resisting room of 4 hours rating had to be built; the entrance of the room was to be provided with a steel door of 2 hours fire rating with a curve of suitable height to prevent the flow of oil from raptured transformer into other parts of the basement. K-8.4 (b) stated that transformer were to be protected by an automatic high pressure water spray or a foam

sprinkler system. If housed at ground floor level, it/they were to be cut off from the other portion of premises by fire resisting walls of 4 hours fire resistance. Bye Law K-8.4 (c) mandated that a tank of RCC construction of adequate capacity was to be provided at lower basement level to collect the oil from the catch-pit to the tank and was to be of non-combustible construction. K-9 prescribed the provisions of first aid and fire fighting appliances. It reads as follows: -

> *"K-9.1 The First Aid Fire Fighting equipments shall be provided on all floors including basements, occupied terrace, lift rooms in accordance with IS 2217-1963 Recommendations for providing First Aid Fire Fighting Arrangements in Public Buildings in consultation with the Chief Fire Officer.*
> *K-9.2 The Fire Fighting Appliances shall be distributed over the building in accordance with IS 2190 Code of practice for selection, installation and maintenance of portable First Aid Fire Appliances."*

Bye Law K-11 prescribed the standards for fire alarm systems. The relevant portion thereof reads as follows: -

> *"K-11.1 All buildings above 15 m. in height shall be equipped with fire alarm system as given in Bye-laws No.K-11.1.1 and K-11.1.2.*
> *xxx xxx xxx xxx*

> *K-11.1.2 All other buildings - All buildings other than as indicated under Bye-law No.K-11.1.1 shall, in addition to the manually operated electrical fire alarm system, be equipped with an automatic fire alarm system. The letter shall be in addition to the alarm which may be sounded by the actuation of any automatic fire extinguishing system which may be installed in any particular occupancy in accordance with these bye-laws. Unless otherwise decided by the Chief Fire Officer, Delhi Fire Service, the detectors for the automatic fire alarm system shall confirm to IS:2175-1962 Heat Sensitive Fire Detectors and the system shall be installed in accordance with IS-2189-1962 Code of Practice for Automatic Fire Alarm system, or any other relevant Indian Standards prepared from time to time.*

Note: - Several types of fire detectors are available in the marked but the application of each type is limited and has to be carefully considered in relation to the type of risk and the structural features of the building where they are to be installed.

7.153 The Delhi Fire Prevention and Fire Safety Act, 1986 was enacted by the Parliament in 1986 and brought into force on 27.2.1987. It provided by Section 3 for inspection of building premises etc. by the nominated authority for ascertaining adequacy or contravention of fire prevention and fire safety measures. Consequently, powers to deal with and if necessary seal any building or premises, determined to be non-compliant with fire safety measures, were conferred by Sections 4 & 5. Section 6 reads as follows: -

"6. Provision regarding certain buildings and premises.

(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Fire Officer may enter and inspect any building, the construction of which was completed on or before the 6th day of June, 1983 (being the date on which the current building bye-laws had come into force) or any building which was under construction on such date if such inspection appears necessary for ascertaining the adequacy of fire prevention and fire safety measures in such building.

(2) The entry and inspection under sub-section (1) shall be done by the Chief Fire Officer in the manner laid down in Section3.

(3) The Chief Fire Officer shall, after inspection of the building or premises under sub-section 91), and after taking into consideration –

(i) the provisions of the building bye-laws in accordance with which the plan of the said building or premises was sanctioned;

(ii) the conditions imposed, if any, by the local authority at the time of the sanction of the plan of the said building or premises; and

(iii) the minimum standards for fire prevention and fire safety measures specified for such building or premises as may be specified by rules framed under this Act.

issue a notice to the owner or occupier of such building or premises stating therein the inadequacy in regard to the fire prevention and fire safety measures in it and direct the owner or occupier to undertake measures for

rectifying the said inadequacy within such period as he may consider just and reasonable."

7.154 In exercise of the rule making power conferred under Section 16 of the said 1986 Act, the Delhi Fire Prevention and Fire Safety Rules were framed and brought into force w.e.f. 31.3.1987. Rule 5 imperatively prescribed that minimum standards for fire prevention and fire safety measures specified for building or premises shall be as are provided in Building Bye-Laws notified in 1983. The said Rule reads as follows: -

> ***"5. Minimum Standards*** *– The minimum standards for fire prevention and fire safety measures specified for building or premises shall be as are provided in building bye laws notified in 1983 or as may be amended from time to time thereafter, relating to the following matters: -*
> *(1) Means of access*
> *(2) Underground/overhead water static tanks*
> *(3) Automatic sprinklers system*
> *(4) First-aid Hose Reels*
> *(5) Fire extinguishers of ISI certification mark*
> *(6) Compartmentation*
> *(7) Automatic fire detection and alarm system/manually operated electrical fire alarm system*
> *(8) Public address system*
> *(9) Illuminated exit way marking signs*
> *(10) Alternate source of electric supply*
> *(11) Fire lift with fireman switch*
> *(12) Wet rister Down Comer System"*

7.155 In the previous portion of this judgment, the Court has discussed that after two major fires in the city of Delhi in 1983, the Uphaar Cinema building's license was directed to be suspended and 11 notified deviations were ordered to be rectified. The order of the

licensing authority was challenged in the writ proceedings; this Court granted an interim order. The interim order was later made absolute but upon condition that in the event the authorities felt that building was not complying with the provision of law vis-à-vis fire safety, they could seek vacation of the stay order. The materials on record show that in the successive inspections which took place in 1988, 1994 and 1996, several deviations were noticed, including those in the top floor. The applications for grant of annual licenses under the Cinematograph Act were not granted; instead two month's temporary licenses were issued – apparently because the matter was pending and had not been resolved by the Court. In the meanwhile, with advent of the 1986 Act and the Rules framed under it, the standards of fire safety, both as regards structural aspects as well as availability of appliances, were prescribed under Rule 5 of the 1987 Rules. These assumed mandatory character and being specific as regards the question of fire safety, acquired primacy over bye-law 3.7of 1983 bye-laws. The said bye-law-3 had exempted application of certain bye-laws in its operation to building authorized under the previous 1959 bye-laws. As a consequence of the combined operation of the non obstante clause under Section 6 of the 1986 Act as well as Rule 5, the fire safety measures prescribed in 1983 became universally applicable to all buildings. In addition Rule 5 of the 1987 Rules also prescribed the standards which were to be complied with by all buildings, towards fire safety. In a Division Bench judgment of this Court reported as *B.L. Vadhera* v. *Govt. of NCT of Delhi* (105 (2003) DLT 1), it was held that all buildings constructed after 6.6.1983 had to strictly conform to the bye laws framed in 1983.

As far as buildings constructed prior to that date were concerned, the Court held that Chief Fire Officer had a duty to inspect every such building and ensure that adequate fire safety measures were taken. This Court is to, therefore, consider the duty cast upon the Chief Fire Officer (hereinafter referred to as CFO) acting though his officers, and the matter in which it was discharged.

7.156 It was urged on behalf of accused H.S. Panwar that all the equipment prescribed by the norms, including fire extinguishers, were present, at the time of inspection. Counsel pointed out that the utility or existence of such equipment, as well as other appliances such as exit lights, gangway lights and emergency lights, had to be ensured, by the licensee and owner at the time of operation of each show. That these appliances were missing at the time, or that emergency lights or exit lights did not function, was something not within the control of any official of the fire department, or the accused. He also relied on the depositions of defence witnesses, DW-1 and DW-3, to say that an inspection was conducted on 6th July, 1997, when the operability of the fire extinguishers were demonstrated.

7.157 It had been urged, additionally, on behalf of the other accused, such as Sushil Ansal and Gopal Ansal, that the fire department was satisfied about the existence of fire extinguishers, and all other equipment; the building was certified as compliant with the norms. In the absence of any inspection at the relevant time, the observations about missing

exit lights, emergency lights not being operational, or inadequacy of fire extinguishers, etc could not be sustained. The prosecution, they contend, was unable to establish any negligence or illegal omission in this regard.

7.158 The prosecution had adduced evidence in the form of request letters by the DCP (Licensing) to the Fire Department (i.e. the CFO) for the period 1982-83 to 1988-89 as Ex.PW-37/H. Some of the inspection reports Ex.PW-37/J (dated 10.8.1988), Ex.PW-37/M (dated 20.5.1989); PW-37/O (dated 25.4.1990) being a request for CFO to inspect the premises; inspection report Ex.PW-37/P (dated 14.6.1990); Ex.PW-37/R (dated 28.4.1991) being inspection report in regard to the renewal of the license for the period 1.4.1991 to 31.3.1992 have been relied upon. After inspection of the premises on 28.4.1991(Ex.PW-37/R) the Divisional Officer in the Fire Department wrote on 29.4.1991 (Ex.PW-37/S), outlining deficiencies in the fire equipment, noticed in the Uphaar Cinema. This included the observations regarding two broken fire extinguisher nozzles; installation of improper fire extinguishers in the main hall; a direction to refill the water tank fire extinguishers in the main hall and balcony; provision for rubber mat etc. After these deficiencies were pointed, a letter (Ex.PW-37/T) was written to the DCP (Licensing) on 6.6.1991 by the Fire Department stating that the deficiencies had been rectified. This was preceded by a letter written on behalf of the Uphaar Cinema.

7.159 The DCP (Licensing) received an inspection report dated 26.3.1992, concerning the period 1.4.1992 to 31.3.1993. This report, was in standard format, 15 rows and 11 columns. The rows concerned the placement of equipment such as hose reels, water bucket drum, blankets, exit lights, emergency lights, trained fireman, fire protection/safety arrangement including placement of extinguishers etc. The columns interestingly dealt with the various places in the cinema such as the hall, balcony box, pantry, projection room, rectifier room, rewinding room, AC plant/blower, generator room, electrical sub-station/distribution panel and covered parking. The inspection reports only mention about the presence of certain fire safety equipment but did not indicate in any other detail the deficiency or compliance with the standards. This is a common feature noticeable with all the inspection reports right up to the last one issued before the fire.

7.160 Ex.PW-37/X is the NOC issued on 27.3.1992 by the office of the CFO concerning the period 1992-93. The Ex.PW-37/Y is the letter of request by the DCP (Licensing) to the office of the CFO asking it to inspect the premises. Ex.PW-37/Z is the inspection report dated 29.4.93 recording compliance with the norms.Ex.PW-37/AB is a letter issued by the DCP (Licensing) to the CFO requesting the latter to inspect the premises and intimate the position of fire safety and if necessary to bring to the notice of the licensee any comments in that regard.

7.161 Pursuant to an inspection, adverted to in the previous part of the judgment, the licensee of the cinema was intimated on 12.8.1994 of certain deficiencies. This referred to the points mentioned in the first inspection which had taken place, of the building in 1983. The cinema management wrote back on 12.10.1994 saying that deficiencies had been rectified. Ex.PW-33/G is a letter dated 19.4.1994 written to the DCP (Licensing) recording no objection pursuant to a report made on 14.4.1994. The report was exhibited as PW-33/H. After the inspection, a letter (Ex.PW-33/A) dated 17.4.1995 was written to the G.P.T. Ltd i.e. the Cinema. This recorded that six fire extinguishers of CO-2 type were installed in the top floor.

7.162 An inspection of the cinema was conducted on 29-4-1995 by Divisional Officer Shri PK Sharma and Station officer accused Surender Dutt (now expired) in the presence of accused KL Malhotra (now expired) by inspection report Ex.PW37/AH. The inspection report sent by the Chief Fire officer reads as under:

> *".....During the course of inspection, fire fighting arrangements already provided by the cinema management were seen. Some of the fire extinguishers and hose reels were operated to adjudge the performance and the same was found satisfactory at the time of inspection and must always be maintained in similar efficient working condition at all time and at least two trained persons must be available during exhibition of the films and then in the end , it is very specifically mentioned that in view of the above, the department has no objection to the renewal of license of the above mentioned cinema from fire safety and means of escape point of view....."* _

The fire department apparently treated the matter as a formality by sending the above report. This fact is fortified when the report prepared by the Chief Fire officer's office, for the previous years are seen. The report of the Chief Fire officer's office, for 1994-95, Ex. PW37/AC had pointed out following shortcomings in the cinema hall building.

> *"1) An office has been erected forming part of the staircase on thetop floor.*
> *2) Atleast three offices on the top floor having wooden partition were in existence and there was no fire extinguisher present except one of non ISI mark."*

It is significant to note on 08.03.95 vide Ex. PW 37/AD Dy. Chief Fire Officer wrote to the management of Uphaar cinema:

> *".....during the inspection it has been seen that Point 1 has been rectified. As already held herein before that the said office existed on the top floor forming part of the staircase on the day of the occurence of the incident. It is also very significant to note the reply was sent by the management of Uphaar Cinema to the Chief Fire Officer on 31.03.95 vide Ex. PW 37/AF. The relevant portion of the reply reads as under :*
> *.....We have treated the wooden partition in the offices with fire retardant paint to increase the fire rating of wood and these partitions are in existence for the last 20 years as per normal practice to sub-divide larger offices by wooden partition....."*

7.163 In the inspection proforma pertaining to year 1995-96, there is no mention whether the shortcomings still existed. The said shortcomings were found to exist in the cinema hall building after inspections were conducted after the occurrence of the incident. Combustible material continued in the cinema hall building, despite previous warnings.

7.164 An inspection by the Fire Department was carried out on 09.4.96 by Ex. PW 32/A by Divisional Officer HS Panwar Station officer Surender Dutt (now expired) in the presence of KL Malhotra (now expired). After the inspection 'No Objection Certificate' Ex.PW32/B dated 18.4.96 was issued by HS Panwar, for DFS. The relevant portion of the said 'No Objection Certificate' reads as under :

> *"....During the course of inspection , fire fighting arrangements already provided by the cinema management were seen. Some of the fire extinguishers and hose reels were operated to adjudge the performance and the same was found satisfactory at the time of inspection and must always be maintained in similar efficient working condition at all time and atleast two trained persons must be available during exhibition of the films and then in the end , it is very specifically a mentioned that in view of the above, the department has no objection to the renewal of license of the above mentioned cinema from fire safety and means of escape point of view..... _*

Thereafter a letter dated 20.09.06 Ex.PW37/AL was sent to CFO by DCP (Licensing) requesting comments from the CFO. The letter says that the report had not been received, and requests it, at the earliest,

> *" to enable this office to renew the license of cinema as licensee is pressing hard for the same....."*

The tone is suggestive of the authorities anxiety to accommodate the licensee, rather than being satisfied that all safety norms were complied with. The inspection was carried out in the presence of K. L. Malhotra and accused Shri Sharma, of Uphaar cinema. The following deficiencies were found and were intimated to the Manager, Uphaar Cinema on 18/11/96 by letter Ex.PW33/C:

"1) The fire extinguisher required refilling i.e water, CO2, DCP and foam type
2) The sprinkler system in the basement is not operating and
the gauge bell is not provided
3) The wooden planks are stored in the basement. It requires to be totally removed from there.
4) First aid box shall be provided in the projector room which is not available.
5) Fire safety measures shall be provided in the visitor lounge on each floor, director office and guest room and on the ground floor parking
6) Foot lights in the balcony shall be provided In view of the above 'No Objection Certificate' shall only be considered after compliance of the aforesaid shortcomings and re-inspection by the department... ."

7.165 On 28.11.96, by letter Ex.PW33/F information was sent on the letter head of the Ansal Properties & Industries Ltd. by Shri Vimal Nagpal of Uphaar Cinema informing the Divisional officer, Delhi Fire service that the short comings pointed out were rectified and a request was made to issue 'No Objection Certificate'. On 22.12.96 re-inspection was carried out by accused H. S. Panwar and Station House Officer Surender Dutt and thereafter, inspection report/No Objection Certificate Ex. PW 33/D was sent on 24.12.1996 to DCP (Licensing); it reads as follows:

".....During the course of inspection , fire fighting arrangements already provided by the cinema management were seen. Some of the fire extinguishers and hose reels were operated to adjudge the performance and the same was found satisfactory at the time of inspection and must always be maintained in similar efficient working condition at all time and atleast two trained persons must be available during exhibition of the films and then in the end , it is very specifically a mentioned that in view of the above, the department has no objection to the renewal of license of the above mentioned cinema from fire safety and means of escape point of view...."

There is no report by the Chief Fire officer or the accused stating whether the shortcomings pointed out in the letter 18.11.1996 were actually rectified or not. The 'No Objection Certificate' was again issued by the accused on the standard form proforma, described previously in the judgment.

7.166 After the expiry of the license(on 31.03.96), the DCP asked, through letter Ex. PW37/AM, the CFO, on 21-4-1997 for inspection report /comments for renewal of annual license for the period 1.4.97 to 31.3.1998. This inspection was carried out by accused HS Panwar and Station Officer Surender Dutt (since expired) on 12.5.97 by Ex.PW31/DB. The 'No Objection Certificate' was sent on 15.5.97, through Ex.PW31/DC which reads as follows:-

> *"During the course of inspection, fire fighting arrangements already provided by the cinema management were seen. Some of the fire extinguishers and hose reels were operated to adjudge the performance and the same was found satisfactory at the time of inspection and must always be maintained in similar efficient working condition at all time and at least two trained persons must be available during exhibition of films and then, in the end, it is very specifically mentioned that in view of the above, the department has no objection to the renewal of license of the above mentioned cinema from fire safety and means of escape point of view..."*

7.167 On PW-60, a tenant in the building, stated in his deposition that there were no fire extinguishers in his premises. PW-78 deposed that after the accident, he seized 22 fire extinguishers from various places in the cinema hall. PW-49, the CFO deposed that the proforma for inspection from the fire safety angle had been changed; it incorporated

particulars such as fire extinguishers in specific areas, provision for rubber mats, public announcement system, emergency exits, signage, standby power supply, first aid box, asbestos blankets, hose reels, water tanks and trained personnel. This witness also deposed that after the accident, he operated two or three fire extinguishers, which were functioning. He stated that though there was a hose reel, water was not available, due to lack of electricity. PW-48 deposed about the state of inspection, on 5-7-1997, and his report Ex. PW-48/D. In the report, he observed that during inspection, no fire fighting material, viz. buckets or fire extinguishers were found, placed inside the transformer room. According to DVB's practice, such equipments were placed in HT switchgear room; however, in this case, they were missing from the HT room. PW-64, who had tested the fire extinguishers, annexed a table in his report PW-64/D, which was extracted in the previous part of this judgment.

7.168 PW-85 deposed to being untrained for operating fire extinguishers. He also deposed that the mike for the public address system in the theatre was not operational. According to him, emergency lights were not controlled from the operator room; they were also not connected to the projector room. He admitted that two fire extinguishers were there in the operator room, that were operated during inspection by the Naresh Kumar committee inspection.

7.169 The above discussion shows that:

(1) No objection certificates were being issued, mechanically and merely for the asking by the licensee, of the cinema hall. The inspection reports which preceded these exercises were in proforma or standard form; the inspections carried out lackadaisically granted the permission to renew licenses.

(2) The concerns required to be addressed in DCR 1953 and DCR 1981, regarding fire safety as well as means of escape and exit, (or rapid dispersal) in the event of fire or other emergency, were not even considered. In fact, on the contrary, Ex. PW 33/D on 24.12.1996 to DCP (Licensing) records that

> "*the department has no objection to the renewal of license of the above mentioned cinema from fire safety and means of escape point of view...."*

(3) The last inspection report, dated 12-5-1997, does not show any application of mind to the compliance with the gangway, exit rules or other vital aspects which the fire department had to necessarily consider as part of its obligation, under Section 6 of the 1986 Act, read with Rule 5;

(4) All the reports, preceding the fire incident of 13-6-1997, talk of existence of equipments mandated by the rules. However, significantly, they omit any mention whether these equipment were tested, and found in order. Similarly, it is not known whether the report of 12-5-1997 was preceded by testing of the emergency, and other lights.

(5) The evidence of PW-85 that the emergency lights were not controlled from the operator or projector room, assumes significance. According to the contention of accused

Gopal Ansal, the lack of electricity, due to tripping at 5-05 possibly meant that the lights went off. Here, it is to be remembered that during such emergencies, the emergency lights have to be automatically switched on; they should not depend on the general supply; or even on the generator supply.

(6) The depositions of PWs 1, 3, 7, 10 and 11 establish that no public address system, emergency lights or exit lights were operational at the time when smoke entered the cinema balcony.

(7) None of the inspection reports even notices that two transformers, one of 1000 KVA capacity, (installed by DVB) existed on the ground floor, near the parking area. There was no advertence or assessment of fire hazard of that equipment, or in the transformers' proximity, or its condition, in relation to the parked vehicles. No advisory in that regard was even mentioned; perhaps not even thought of. These concerns were essential, and had to be addressed by virtue of provisions of the DCR 1953 and DCR 1981.

(8) There was no fire extinguisher, of any type in the DVB transformer room;

(9) The report of the fire department dated 18-11-1996 PW-33/C had noted inadequacies in the existing transformer. However, the subsequent report stated that the deficiencies were rectified. This inspection was supposedly carried out- as the evidence points out- when the accused H.S. Panwar was on leave. The subsequent report mechanically gave clearance, vis-à-vis fire safety.

7.170 In view of the above discussion, it is held that the clearance or approval and the no-objection certificates issued by the fire department, were contrary to DCR 1953, and contrary to vital fire safety norms. They were issued mechanically, in a routine manner. The cinema hall was also ill equipped with appliances, and several fire extinguishers were not operable, according to the report Ex. PW-64/D. These establish beyond a doubt that the clearances by the fire department, preceded by inspections were unreliable; the cinema management did not comply with safety norms, both in regard to fire emergencies, as well as other emergencies, to facilitate rapid evacuation of patrons. The appliances and extinguishers were neither sufficient nor adequate to quell the fire.

Position in the balcony

7.171 The trial court found that the balcony was unmanned at the time of the accident; there was no gatekeeper or torch-man, the public announcement system did not function, the emergency lights did not operate, and the balcony doors were shut. This, it was held, resulted in delaying the patrons' exit, leading to fatalities and serious injuries, due to smoke exposure.

7.172 PW-1 deposed about commotion in the balcony and other patrons saying that balcony doors were closed. According to PW-3, in the balcony, at when the smoke entered, no exit lights were on, there was no alarm and nobody from management was there. He deposed that patrons were trying to push the main door but it was locked. He watched people

bringing their babies, children and other persons dead out of the cinema building. PW-7 deposed that at that time, (i.e when smoke entered the balcony) lights went off and it was pitch dark. He, with his sister tried to come out of balcony but were unable to do so. Both felt suffocated due to smoke and gases; it was difficult to breathe and they got stuck in the balcony, for 10 to 15 minutes. He deposed that there was no gate keeper, no torch man, no emergency announcement system, or any emergency light. PW 8 Amit, deposed that while the show was on, the lights went off and some smoke arose before the screen. Noise was heard from the auditorium and people started going out. There was lot of smoke. They tried to come out. All doors were closed and he could not open them. They were able to break open. There was lot of smoke and nobody was there to help. PW-11 stated about absence of announcement systems, and lights. The public (patrons) near the balcony door pushed it open. He was in the last row in the middle of the balcony; he mentions about commotion and that balcony doors were shut. Half the people were standing and half were sitting, a situation which continued for 5-7 minutes. He deposes about lot of pushing and people trying to go out, without a care for others. He did not know the number of exits, but deposes about one separate exit and one entry. He denied the suggestion that there was light, in the balcony. PW-63, the security guard, after noticing the fire and smoke, rushed up; he went to the staircase which led on to the fourth floor and where a door was located. He pushed that door open. He asked the people to go upstairs, but at the end the staircase was locked. He broke open the door and tried to use another staircase leading to top floor which was at some

distance from there. The door was found bolted; he tried to open it. A lot of smoke and gas was there. He immediately closed the door. He entered inside the office on the fourth floor, when members of the public followed him. PW-49, the Chief Fire Officer, reached the cinema hall at 5-45 PM and found that some people were trapped in the balcony area. There was smoke and a lot of heat; he could not open the balcony foyer door, which was forced open by his officers. He helped rescuing 3 persons, who were not responsive or moving, as well as a girl.

7.173 The prosecution had relied on a letter (part of Ex. PW-69/AA) dated 28-5-1982, issuing a show cause notice under Rule 12(8) DCR 1981, to the cinema management, stating that when an inspection was carried out, it was discovered that the doors had been bolted. In its reply, (written by accused Gopal Ansal) on 4-6-1982 (Ex. PW-110/AA-24) the licensing department was assured that such practice could have been due to constant opening of the doors or due to pressure of air conditioning. It was stated that:

" We assure you that utmost precaution would be taken in future…"

7.174 The discussion of oral evidence, seen in the background of the deviations noticed earlier in the balcony, would show that the patrons were exposed to smoke for a long time; many patrons, and certainly the eyewitnesses who spoke in that regard, were unable to leave the place swiftly. The Chief Fire Officer (PW-49) who went to the balcony at around 5-

45, had to ensure that the foyer door was forced open; he witnessed at least 3 people being taken out of, or rescued from, the balcony. Several eyewitnesses have corroborated each other in saying that the doors were bolted. It has come on the evidence that the right side exit, from the balcony was completely blocked by the eight seater box, placed in 1978. It has also been found earlier that several changes in the balcony seating, resulted in narrowing of a gangway and blockage of one gangway on the right side. These, coupled with absence of any lighting, and absence of help by employees at the vital time, both exposed these patrons to the thick dense smoke for a long period, and also hindered free movement. Many patrons, who managed to exit from the balcony, were still trapped; they tried to flee the hall, and broke open some windows This exposure to smoke, and lack of easy access outside, resulted in death of several persons and serious injury to many others.

VIII. *The Law on Criminal Negligence Section 304-A, IPC – rashness, negligence, foresight and causation; consideration of Section 36, IPC*

> *All our work, our whole life is a matter of semantics, because words are the tools with which we work, the material out of which laws are made, out of which the Constitution was written. Everything depends on our understanding of them.*
>
> \- Felix Frankfurter

8.1 Before a discussion of the case law, cited by counsel for parties, it would be necessary to notice the relevant provisions, of the Indian Penal Code (IPC). They are extracted below:

"***Section 32. Words referring to acts include illegal omissions***
In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Section 33. Act Omission
The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well as series of omissions as a single omission.

Section 36. Effect caused partly by act and partly by omission
Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Section 43. Illegal, Legally bound to do
The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

Section 299. Culpable homicide
Who ever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Section 304. Punishment for culpable homicide not amounting to murder
Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,
Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

304A. Causing death by negligence.
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.

Section 336. Act endangering life or personal safety of others
Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Section 337. Causing hurt by act endangering life or personal safety of others
Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Section 338. Causing grievous hurt by act endangering life or personal safety of others
Whoever causes grievous hurt to any person to doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."

8.2 The distinction between the three offences of murder and culpable homicide on the one hand and causing death by criminal negligence may be summarized now. Murder and culpable homicide involve the *mens rea* element or state of mind of the offender. These offences are separated from each other not by the consequences, but the intention of the offender to the particular result. The other class of culpable homicide is where the accused causes an injury without intention of causing death, but with knowledge that death would be likely. In the case of criminal negligence what has to be proved is the act, amounting to breach of duty of care, which causes death. There, the perpetrator does not have knowledge or intention of the result, but acts rashly, or negligently with disregard to the consequences of

his action. In such *intentionless* or "knowledge-less" offences, the rash or negligence standards are the same; it is only the consequence that determines the offences. So, if the rash and negligent act results in death, the accused is guilty of Section 304-A; if the consequence is grievous hurt, the offence proved is Section 338 IPC.

8.3 The all-important question upon which both the appellants and the prosecution led considerable arguments were the precise import of what constitutes criminal negligence. On behalf of the appellants various decisions, such as *Emperor v. Omkar Rampratap*, (1902) 4 Bom LR 679, *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra*, AIR 1965 SC 1616, *Ambalal Bhat v. State of Gujarat*, (1972) 3 SCC 525 and *Jacob Mathew, Petitioner V. State Of Punjab & Anr* 2005 (6) SCC 1 were cited. It was principally urged that to constitute criminal negligence, it should be proved beyond reasonable doubt that (1) the accused owed duty of care to the victim (2) such duty was breached (3) the breach or the consequence of such breach was reasonably foreseeable and (4) the cause of the accident which led to the death or bodily injury and in the case of Section 336/337 of IPC was the most efficient and proximate cause and not a remote one. The appellants, particularly accused 1 and 2 relied upon several English decisions to bring home the question of what constitutes the reasonable foresight. These were *John Oni Akerele Vs. The King,* AIR 1943 PC 72*; Overseas Tankship UK Ltd v. Morts Dock Engineering Co. Ltd. ("the Wagon Mound No. 1")* [1961] 1 All ER 404, *Corporation of Glasgow v. Muir*, [1943] 2 All ER 44*, Bolton v. Stone* [1951] 1 All ER 1078, *Lord v. Pacific Steam Navigation Co. (The Oropesa)* [1943] 1

All ER 211, *Doughty v. Turner Manufacturing Co.*, [1964] 1 All ER 98, *Rajkot Municipal Corporation v. Manjul Ben Jayanti Lal Nakum,* (1997) 9 SCC 552.

8.4 It was argued that awareness of the consequence of the breach of duty should be of a very high order to constitute the offence. All the appellants had emphasized that mere negligence resulting in a consequence, howsoever harsh and also resulting in several deaths alone should not impel the Court to conclude the nature of the risk and its forseeability was of such order that the offender must reasonably be expected to have been aware of it. The cause, and not the dimensions of the consequences, (which would cloud the issue) should determine the guilt or innocence. Anything short of such requirement, it was submitted, would be applying a civil or *tortious* norms for convicting those accused for the offence criminal negligence which would be impermissible. It was also submitted that the Court cannot fall back upon doctrine such as *res ipsa locquitor*, a rule of evidence rooted in civil law in case of tortious liability. For this purpose reliance was placed on *Syad Akbar Vs. State of Karnataka,* (1980) 1 SCC 30. It was also argued that the intervening actions of others, which could not reasonably foreseen by the accused and which were the cause of accident lead to death, (termed as *novas actus intervieneus* i.e. a new act intervening, breaking the chain of causation set in to motion by the accused) absolving such accused. In support of this reliance was placed upon the decision reported as *Mutual Life and Citizens Assurance Company Ltd. Vs. Evatee* [1971] 1 All ER 150 and *Lamb v. London Borough of Camden* [1981] 2 All ER 408.

8.5 The CBI on the other hand had relied upon the decision reported as *Bhalchandra Waman Pathe v. State of Maharashtra,* [1968] ACJ 622, Bhalchandra *alias Bapu and Anr v. State of Maharashtra,* AIR 1968 SC 1319, *Rustom Sheriar Irani v. State of Maharashtra*, [1969] ACJ 70; *Cherubin Gregory Vs. State of Bihar*, 1964 (4) SCR 199, and *Suresh Gupta Vs. NCT of Delhi*, AIR 2004 SC 4091.

8.6 It was urged that *Rustam Irani's* case underlines that the forseeability standard need not necessarily mean that the accused should be present when the accident occurs leading to death or grievous injury, nor that the cause must be one, and establishes that it is sufficient that the court is convinced about his role in the cause which led to accident and consequent death. Reliance was similarly placed on *Woodward v. Crown* AIR 1925 Sind 233, *State of M.P. Vs. Ranjit Kumar,* AIR 1959 MP 284; *Tulsi Sita Ram Vs. State*, 1963 (1) Criminal Law Journal 44, *Ganesh Gir Vs. State of M.P.,* AIR 1966 MP 311. To indicate what should be the standard for judging criminal negligence, CBI relied on *R. v. Bateman* (1925) 19 Cri App Rep 8, *R. v. Lawrence,* [1981] 1 All ER 974; *Andrews v. Director of Public Prosecutions* (1937) 2 All ER 552, and *R v Adomako,* [1994] 3 All ER 79.

8.7 The *locus classicus* on section 304-A is *Emperor v. Omkar Rampratap*, (1902) 4 Bom LR 679, where, certain women were working in a half roofed building, temporarily hired by and in the possession of the appellant. The premises were used for grinding sulphur for manufacturing gun-powder. The premises caught fire, as a result of which three women died

and others were injured. The prosecution argued that the fire was caused by the rash and negligent acts of the appellants, since they stored gun powder in gunny bags in a temporary shelter. Rejecting the prosecution's case the court acquitted the appellant and held as follows:

> "*To impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be proximate and efficient cause without the intervention of another's negligence. It must be the causa causans; it is not enough that it may have been the cause sine qua non*"

Thus the court held that the act in question must be the direct, proximate and efficient cause for the death, without the intervention of another's negligence. This postulate was followed in a number of later decisions.

8.8 In *John Oni Akerele* (*supra*), the doctor was charged and convicted with criminal negligence. He had mixed a strong dose of sobita and injected it. This over dose resulted in death of several young children. The Court, reversing the concurrent conviction of the appellant held that the negligence, to be culpable depends upon the probable and not the actual result. In the facts of the case the Doctor could not be held responsible as the probable result of such over dose was not known to him. The Court commented that it is impossible to define culpable or criminal negligence or make it intelligible except by means of illustrations, drawn from judicial opinions. Concluding that the distinction between civil and criminal liability had been inexactly drawn- in that case, and instances of negligence, were found having regard to the many deaths, the Court concluded that conviction was fallacious.

8.9 In *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra*, AIR 1965 SC 1616, the accused was the owner of a factory engaged in manufacturing paints and varnish. Though he was only authorized to manufacture dry paints by a cold process, he had started manufacturing wet paints through heating. Burners were used in the process, for melting resin and then adding turpentine to it. On April 20, 1962, the melted resin overflowed from the barrel in which it was being heated and set alight the turpentine stored nearby. As a consequence of this fire, 7 men working in a loft nearby were charred to death. The reason for the overflow was that a worker, in charge of the operation, had added turpentine to the melting rosin but was unable to stir the mixture, as a result of which it kept frothing and overflowed. The accused was charged under Sections 304-A and 285 of the Indian Penal Code for having caused death through a rash or negligent act. His main contention was that he was not present at the time the fire broke out and therefore it could not be said that he had caused the death of the seven persons through any rash or negligent act. The Magistrate, as well as the High Court, who had convicted the accused, held that the very fact of storing turpentine in the same room as the burners would amount to a rash or negligent act and make the accused responsible for the deaths. Applying the test laid out in *Omkar* (*supra*) the Supreme Court held:

> "*[T]he mere fact that the appellant allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it might be a negligent act, would not be enough to make the appellant responsible for the fire which broke out. The cause of the fire was not merely the presence of*

burners in the room in which varnish and turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out. But what S. 304-A requires is causing of death by doing any rash or negligent act, and this means that death must be the direct or proximate results of the rash or negligent act. It appears that the direct or proximate cause of the fire which resulted in the seven deaths was the act of Hatim"

8.10 The case of *Bhalchandra Waman Pathe v. State of Maharashtra,* [1968] ACJ 622 involved the case of the appellant running over a pedestrian, at a crossing, while he was speeding at 40 miles per hour, when the permitted speed was only 35 miles per hour. The Magistrate found him guilty under section 304-A, and imposed a fine of Rs. 2000. The High Court not only confirmed the conviction but also enhanced the sentence to six months simple imprisonment and a fine of Rs. 200, against which he appealed to the Supreme Court. Disagreeing with the enhancement, and differentiating the terms 'rash' and 'negligent', the Supreme Court held that:

"An offence under Section 304-A Indian Penal Code may be committed either by doing a rash act or a negligent act. There is a distinction between a rash act and a negligent act. In the case of a rash act as observed by Straight, J. in Idu Beg's case. (ILR 3 All 776) the criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence 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. Negligence is an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Again as explained in Nidamarti Nagabhushanam's case. (1872) 7 Mad H.C.R. 119 a 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. 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 if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection."

The Court further held that as between rashness and negligence, rashness is undoubtedly a graver offence. It held that appellant could not have been said to be rash or reckless, but definitely negligent because he had the duty to look ahead and see whether there was any pedestrian in the pedestrian crossing. Therefore, the enhancement was unjustified.

8.11 In *Rustom Sheriar Irani v. State of Maharashtra*, [1969] ACJ 70, the court held that if a person who is not an engineer chooses to decide for himself the width of the pipe of the chimney of a bakery, and entrusts the work of alteration of the chimney to a mason who had not designed chimneys before, and does not completely stop the functioning of the ovens during the construction of the chimney, he should be held guilty of negligent acts under section 304-A, irrespective of the fact that the chimney collapsed on account of the negligence of the mason. It held:

"But on the facts of this case it seems to us that the proximate and efficient cause of the deaths was the negligence of the appellant in choosing a pipe of six inches diameter and asking PW 8 to carry out the alterations, and also continuing working at least one oven during the period while alterations to the chimney were being made. Even if Gunaji Lad was negligent in actually fixing the pipe on the brick masonry, the proximate and efficient cause of the accident was the acts of the appellant mentioned above.'

8.12 In *Bhalchandra alias Bapu and Anr v. State of Maharashtra,* AIR 1968 SC 1319, the appellants were the owners of a factory which manufactured crackers. An explosion in the factory led to death of some working in it. It was discovered that the appellants had stored chemicals and explosives for which they had no authorization, and had also committed a number of breaches of the conditions contained in the licenses issued to them. The appellants taking cue from *Omkar* (*supra*) argued that their act of storing such explosive material, despite them being in contravention of law, was not the direct cause of the explosion. The Court held that, even though the exact cause of the explosion could not be determined, the appellants had undoubtedly displayed a high degree of negligence by allowing or causing to be used dangerous and prohibited substances which must be held to have been the efficient cause of the explosion.

8.13 The case of *S N Hussain v. State of AP*, (1972) 3 SCC 18 involved a bus driver who was convicted under section 304-A for causing the death of people while he drove through a railway crossing gate and a goods train hit the bus. Acquitting the driver, the Court held that the he was not negligent under section 304-A since he could not have reasonable foreseen that a manned gate would be left open when the train came, especially when no whistles were blown and the bus was being driven slowly. The Supreme Court in *Ambalal Bhat v. State of Gujarat*, (1972) 3 SCC 525 had to determine whether a chemist, who negligently used a

unknown source of sodium chloride of different potencies and assigned the same batch number for all four lots of injections manufactured on that day, was responsible under section 304-A for the death of 12 people who were injected. The Court found that the accused was merely carrying on the routine practice, and that such practice was not even objected to by the Drug Analyst or any other authority. It held that in order to be liable under section 304-A, the act causing the deaths must be the *causa causans*; it is not enough that it may have been the *sine qua non.* It will have to be determined that there is not *causa interveniens* which has broken the chain of causation and that the act accused of is the direct and immediate cause. The Court also observed that the fact that twelve lives were lost, however shocking and regrettable it may be, ought not to allow the mind boggle while appreciating the evidence.

8.14 *Tusliram Sitaram v. State* (*supra*) was a case where a ferry contractor, who had not taken out a license to ferry passengers across the river, after expiry of the previous license, took the risk of putting the boat to water and ferrying the passengers and transporting them, as floods were receding, and there was a heavy wave which dashed against the boat and capsized it resulting in the loss of lives; the court concluded that he was guilty of criminal negligence. *Woodward v. Crown (supra)* was a case where the accused, a boiler inspector, was under a duty to periodically inspect certain boilers to see that they were in fit condition. These boilers were in use in locomotives; some pressure plates failed and the boiler exploded. It was held that the failure of the accused's duty to carry out his duty of inspecting the boilers, resulted in the boiler explosion and caused loss of life and injury to some persons, he

was held guilty. In *Cherubin Gregory (supra)*, the placement of naked electrical wire, without warning, resulting in death of persons who came into contact with it, were held to be acts of rashness and criminal negligence.

8.15 *Syad Akbar (supra)* involved the driver of vehicle, charged with criminal negligence for rash driving. It had been found that a young child was run over by him even though he was driving below the speed limit prescribed. The child, accompanied by her mother was crossing the road; when the mother had crossed over, the child suddenly dashed across the road and was caught under the left wheel of the accused bus, which crushed her to death. The Supreme Court held that ordinarily, proof that an event occurred resulting in an accident the cause of which was unknown, is not evidence of negligence. However, the peculiar circumstance constituting the event in a particular case may proclaim in clear and unambiguous terms, the negligence of someone as it has caused/happened. After exploring the nature of presumptions which courts can try in the course of criminal trial i.e. permissive presumption or presumptions of fact (Section 114); compelling presumptions or presumptions of law (Sections 113, 113-A & 113-B) and irrebuttable presumptions of law or conclusive proof (Section 112), the Court held that in an action in tort it is possible for the Court to rely upon and apply the maxim *res ipsa locquitor,* but since it gives a larger effect than that of a merely permissive inference, it cannot be applied universally in criminal cases. The court posited a high degree of proof, i.e. beyond reasonable doubt. After considering the

evidence, the Court upset the conviction and set aside the sentence imposed upon the appellant. It was held that the maxim was useful only to a limited extent:

> *"However, shorn of its doctrinaire features, understood in the broad, general sense, as by the other line of decisions, only as a convenient ratiocinative aid in assessment of evidence, in drawing permissive inferences under S. 114, Evidence Act, from the circumstances of the particular case, including the constituent circumstances of the accident, established in evidence, with a view to come to a conclusion at the time of judgment, whether or not, in favour of the alleged negligence (among other ingredients of the offence with which the accused stands charged), such a high degree of probability, as distinguished from a mere possibility has been established which will convince reasonable men with regard to the existence of that fact beyond reasonable doubt."*

8.16 *Jacob Mathew's case* (*supra*), reviewed several judgments of Indian and English decisions on criminal negligence. It was rendered by a Bench of three Judges of the Supreme Court, upon a reference as to the applicable standard in cases of medical negligence. In that context, the Court approved the formulation in *Andrews Vs. Director of Public Prosecution*, [1937] 2 All ER 552 that a simple lack of care which constitutes negligence in civil law is insufficient to prove criminal negligence. A very high degree of negligence has to be proved before culpability is established. This view was echoed in *Riddle Vs. Reid*, [1942] 2 All ER 161. The Court held that :

> *"while negligence is a omission to do some which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or criminal failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or an individual in*

particular which having regard to circumstances out of which the charge has arisen. It was the imperative duty of the accused person to have adopted".

The Court in its summing up emphasized that in all cases of negligence there are three essential components, i.e., duty, breach and resulting damage. What delineates civil negligence from criminal negligence is the degree of breach of duty, which results in the consequence.

8.17 The prosecution had placed reliance on English decisions that the threshold proving criminal negligence is not an impossibly high one. In this context, the decisions reported as *R. v. Bateman*, (1925) 19 Cri App Rep 8, *R. v. Lawrence,* [1981] 1 All ER 974 and *Andrews v. Director of Public Prosecutions* [1937] 2 All ER 552, and *R v Adomako,* [1994] 3 All ER 79 were relied on. In *Bateman,* the court, while considering the issue, stated that:

"whatever epithet be used and whether an epithet be used or not, in order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment. ..... It is desirable that as far as possible, the explanation of criminal negligence to a jury should not be a mere question of epithets. It is, in a sense, a question of degree and it is for the jury to draw the line, but there is a difference in kind between the negligence which gives a right to compensation and the negligence which is a crime."

8.18 In the next decision, *Andrews v. Director of Public Prosecutions* [1937] 2 All ER 552, the court reiterated that for liability under criminal law, (for negligence):

"simple lack of care such as will constitute civil liability is not enough…a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied 'reckless' most nearly covers the case."

In *R. v. Lawrence,* [1981] 1 All ER 974, speaking of "recklessness" in the context of criminal negligence, the court observed that:

"Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting 'recklessly' if, before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognized that there was such risk, he nevertheless goes on to do it."

8.19 In *Adomako,* the House of Lords sought to resolve a discontinuity in the reasoning, which was a result *R v. Caldwell* [1981] 1 All ER 961, as to what would constitute criminal negligence. The Court held that:

"*the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such breach of duty is established the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterized as gross negligence and therefore as a crime. This will depend on the seriousness of the breach of duty committed by the defendant in all the circumstances in which the defendant was placed when it occurred. The jury will have to consider whether the extent to which the defendant's conduct departed from the proper standard of care incumbent upon him, involving as it must have done a risk of death to the patient, was such that it should be judged criminal.*

It is true that to a certain extent this involves an element of circularity, but in this branch of the law I do not believe that is fatal to its being correct as

a test of how far conduct must depart from accepted standards to be characterized as criminal. This is necessarily a question of degree and an attempt to specify that degree more closely is I think likely to achieve only a spurious precision. The essence of the matter which is supremely a jury question is whether having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission.

My Lords, the view which I have stated of the correct basis in law for the crime of involuntary manslaughter accords I consider with the criteria stated by counsel although I have not reached the degree of precision in definition which he required, but in my opinion it has been reached so far as practicable and with a result which leaves the matter properly stated for a jury's determination."

8.20 It would be useful to sum up this part, with the following quotation from *Naresh Giri v. State Of M. P*, where many of the above English decisions were cited and applied:

"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 other. The death so caused is not the determining factor."

8.21 From the above decisions, certain broad propositions may usefully be outlined, for application in this case. Thus in determining whether an act constitutes criminal negligence, the Court has to be satisfied of:

(1) a duty of care, owed by the accused, and its consequent breach;

(2) Forseeability of the likely consequence of such breach;

(3) the nature and degree of risk of causing death or bodily harm;

(4) The co-relationship between the degree of risk and the culpability of the accused is directly proportionate. In other words higher the degree of risk, the greater blameworthiness of the acts for the consequence.

(5) the consequence i.e. death, bodily harm or simple hurt, determines the criminality of the action. In case the consequence being death the accused would be guilty under Section 304-A IPC. In other cases he would be guilty under Section 337/338 IPC.

8.22 Summation of the legal position, especially in such cases would be an obviously limiting exercise. 'negligence', 'rashness' and 'forseeability' are all well developed concepts. Yet, as *John Oni Okerele (supra)* stated 65 years ago, it is impossible to define criminal negligence and distinguish it from actionable (Civil) negligence except by means of illustrations drawn from actual judicial opinions. Use of words like "gross", "reckless", "grave" borrowed from English decisions, rendered in the era of common law offences, would confuse the issue. One cannot be unmindful of the fact that Section 304-A uses the terms "rash" or "negligent" act, each expression coloring the meaning of the other. As stated in Roscoe's Law of Evidence (15th Edn), - quoted in *Jacob Mathew* (*supra*):

> *".....In explaining to juries the test which they should apply to determine whether the negligence in the particular case amounted or did not amount to a crime, Judges have used many epithets, such as "culpable", "criminal", "gross", "wicked", "clear", "complete". But whatever epithet be used and whether an epithet be used or not, in order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence*

of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment."

The Court, therefore, has to consider whether the extent to which the accused'S conduct:

"departed from the standard of care incumbent upon him, involving as it must have done, a risk of death, to the patient (read victim) was such that it should be judged criminal."
It is true that to a certain extent this involves an element of circularity, but in this branch of law I do not believe that is fatal to its being correct as a test of how far conduct must depart from accepted standards to be characterized as criminal. This is necessarily a question of degree and an attempt to specify that degree more closely is I think likely to achieve spurious precision. The essence of the matter -----is whether, having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission," (*Adomako, supra)*

Forseeability

8.23 It would now be necessary to discuss what constitutes forseeability in the context of criminal negligence. It is a principle of civil liability that the liability for the damage caused by a wrongful act will be determined by the remoteness of the damage from the act in question. If the damage is too remote, then liability shall not be affixed. The test for determining whether the damage is too remote has been a subject of debate. For long, the classic case was *Re Polemis* [1921] All ER 40. The claimants' ship was being unloaded in Casablanca when a quantity of benzene leaked into the hold. As a result of the negligence of certain stevedores who were carrying planks, one of the planks fell into the hold causing a

spark which ignited the benzene. The resultant fire destroyed the ship. The Court of Appeal held the owners liable for the destruction of the ship. The test applied by them was the test of directness which pins responsibility for all direct consequences of the negligent act. The destruction in this case was held to be a *direct consequence* of the stevedores' negligence.

8.24 However, this test was severely criticized and was overturned in *Overseas Tankship UK Ltd v. Morts Dock Engineering Co. Ltd. ("the Wagon Mound No. 1")* [1961] 1 All ER 404. The claim in this arose after the defendants negligently discharged bunkering oil from a ship onto water about two hundred yards away from the claimants' wharf. The oil was carried by the tide onto the claimants' wharf and damaged the slipways. Welding operations carried out by the claimants caused the oil to ignite and the wharf was damaged. The Privy Council, rejecting the *Polemis* "direct consequence" test, devised the test of *"reasonable foresight*" and held that although the damage caused to the slipways was reasonably foreseeable, the damage caused by the fire was not. In the words of Viscount Simonds,

> "*Enough has been said to show that the authority of the Polemis has been severely shaken though lip service has from time to time been paid to it. In their Lordships' opinion it should no longer be regarded as good law. It is not probably that many cases will for that reason have a different result, though it is hoped that the law will be thereby simplified and that in some cases, at least, palpable injustice will be avoided. For it does not seem consonant with current ideas of justice or morality that for an act of negligence, however slight or venial, which result in some trivial foreseeable damage the actor should be liable for all consequences however unforeseeable and however grave, so long as they can be said to be 'direct'. It is a principle of civil liability, subject only to qualifications which have no present relevance, that a man must be considered to be responsible for the probable consequences of*

his act. To demand more of him is too harsh a rule, to demand less is to ignore that civilised order requires the observance of a minimum standard of behaviour"

8.25 In *Phillips Vs. William Whitley* [1938] All ER 566, was an action for damages by the plaintiff who arranged to have her ear pierced by someone contracted by a jeweler to do it in their premises. The operation resulted in plaintiff having to undergo medical treatment for pain in the neck and abscess. The Court, rejecting civil action for damages against the jeweler held that in such a situation a jeweller who holds himself out as a surgeon or professes his ability to conduct the operation by piercing lady's ear by a septic operation about which he knows nothing, cannot be held responsible. In *Grant Vs. Sun Shipping Company Limited,* 1948 AC 549, a ship owner was sued by stevedore who was injured, while he fell into a uncovered hatch which had been left open without any indication and without lighting. The repairers, who were responsible for the uncovered hatch, argued that ship owners owed a duty to inspect the vessel and that the act happened within the bounds of their foresight. The Court while dismissing the repairers appeal held as follows :

"My Lords, I regard it as a well settled principle and when separate and independent acts of negligence on the apart of two or more persons have directly contributed to cause injury and damage to another, the person inured may recover damages from any one of the wrong doers or from all of them."

It was also held that :

"*I have no doubt (leaving aside for the moment the question whether fault can be attributed to the pursuer) that the negligence and breach of statutory duty attributable to each of the defenders "partly" and "directly" caused the pursuer's injuries. Whether or not a cause is a "direct" cause is sometimes a difficult question, but here the precautions which the regulations*

prescribed and ordinary prudence should have dictated have for their object the prevention of accidents of the very nature of that which befell the pursuer.

8.26 In *Doughty v. Turner Manufacturing Co.*, [1964] 1 All ER 98 the defendants had two cauldrons in their factory's treatment room, in which they subjected metal parts to heat by immersing them in a hot molten solution. They provided suitable covers for the cauldrons in order to conserve the heat. One of these covers was accidentally knocked into the cauldron, so as to cause the hot liquid to erupt violently, resulting in burns to the claimant. The Court of Appeal applied the test of reasonable foresight and held that it was reasonably foreseeable that the claimant might have suffered burns as a result of splashing of the liquid from the cauldron. However, it was not reasonably foreseeable that slipping of the cover into the cauldron would cause the liquid to explode. Thus the harm caused to the claimant was too remote. According to Lord Diplock:

"*There is no room today for mystique in the law of negligence. It is the application of common morality and common sense to the activities of the common man. He must take reasonable care to avoid acts or omissions which he can reasonably foresee would be likely to injure his neighbours; but he need not do more than this. If the act which he does is not one which he could, if he thought about it, reasonably foresee would injure his neighbour it matters not whether he does it intentionally or inadvertently*"

8.27 In *Corporation of Glasgow v. Muir*, 1943 (2) All ER 44 members of a picnic party had obtained permission from a lady manager employed by the Corporation of Glasgow to have their tea in the tea room. For this, it was necessary to carry the tea urn through a narrow passage on one side of which there was a counter where several children were buying sweets.

The urn was being carried by a church officer and a boy when the officer let go of the handle and the scalding tea escaped from the urn injuring 6 children. It was urged that the manager was responsible as she should have anticipated that there was a risk of the contents of the urn being spilt and scalding the children in the passage. However, the House of Lords, applying the test of reasonable foresight, unanimously held that the spilling of tea from the urn was not one that was reasonably foreseeable as there was no element of danger to be reasonably anticipated from the careful carrying of the urn. As the accident arose because of an unexplainable mistake by the church officer, the Lordships held the manageress to be free of liability. Their views on the test of reasonable foresight may be pithily expressed in the words of Lord MacMillan:

> "*The standard of foresight of the reasonable man is in one sense an impersonal test. It eliminates the personal question and is independent of the idiosyncrasies of the particular person whose conduct is in question. Some persons are by nature unduly timorous and imagine every path beset with lions; others, of more robust temperament, fail to foresee or nonchalantly disregard even the most obvious dangers. The reasonable man is presumed to be free both from over-apprehension and from over-confidence.*"

8.28 In *Bolton v. Stone* [1951] 1 All ER 1078 the respondent standing on a highway adjoining a cricket ground was struck by a ball hit by a batsman during a match. She brought suit against the occupiers of the ground for negligence. The House of Lords again applied the test of reasonable foresight and, on consideration of the fact that the cricket pitch was protected by a fence, the top of which was seventeen feet above the cricket pitch, that the distance from the striker to the fence was seventy-eight yards and that the ball had gone

outside the stadium just 6 times in the last 30 years, held that it was not reasonably foreseeable that the ball would strike someone standing on the adjoining highway. It was held that:

> "*[t]he standard of care in the law of negligence is the standard of an ordinary careful man, but, in my opinion, an ordinarily careful man does not take precautions against every foreseeable risk. He can, of course, foresee the possibility of many risks, but life would be almost impossible if he were to attempt to take precautions against every risk which he can foresee. He takes precautions against risks that are reasonably likely to happen...It may very well be that after this accident, the ordinary prudent committee man of a similar cricket ground would take some further precaution, but that is not to say that he would have taken a similar precaution before the accident.*"

8.29 In *Lord v. Pacific Steam Navigation Co. (The Oropesa)* [1943] 1 All ER 211 two vessels collided at sea, i.e *the Oropesa* and *the Manchester Regiment.* The latter incurred serious damage. Its crew were therefore ordered to take lifeboats, whereas the captain along with 14 of his crew decided to go in a separate lifeboat to *the Oropesa* to request them to take *the Manchester Regiment* in tow or to offer assistance of any sort. This lifeboat capsized and resulted in the death of 9 of the crew members. It was contended that *the Oropesa* had been negligent in running down *the Manchester Regiment* and the owners of it were therefore responsible for the 9 deaths. The question, before the House of Lords was whether the death of the crew members was a direct consequence of the collision which took place owing to the negligence of *the Oropesa*. To answer this, it had to be first answered whether the action of the captain in deciding to take a lifeboat towards *the Oropesa* would constitute an intervening circumstance and thus break the chain of causation. The House held that the action of the

captain in those circumstances was reasonable; and reasonable human action does not sever the connected sequence of acts. Thus, reasonable human conduct forms part of the ordinary course of things. In the words of Lord Wright:

> "*The mere fact that human action intervenes does not prevent the sufferer from saying that damages for injury due to that human action, as one of the elements in the sequence, is recoverable from the original wrongdoer*"

Therefore, it was held that the chain of causation was not broken and that the owners of *the Oropesa* would be responsible for the death of the crew.

8.30 In *Lamb v. London Borough of Camden* [1981] 2 All ER 408 the plaintiff had let her house while she was away in America in 1972. In 1973, a sewer pipe in a road outside the plaintiff's house was being repaired. The contractors engaged by the local council for this purpose had breached a water main causing the foundations of the house to be undermined. As a result the house became unsafe causing the tenant to move out. Thus the house was left unoccupied to await repair. In 1975, squatters moved in but were evicted by the plaintiff. In 1975, squatters moved in again and caused substantial damage to the house. The plaintiff then filed suit against the Council claiming damages in nuisance and negligence, for the damage caused by the squatters. However, the Court of Appeal held that a reasonable man could not have foreseen that by breaking a water pipe when working on the road he would cause the plaintiff's house to be invaded by squatters. Therefore, the damage was too remote to affix liability on the Council.

8.31 In *Public Prosecutor Vs. Pitchaiah Moppanar,* AIR 1970 Mad 198, the accused, Manager of a School, had a building constructed by employing masons who used excess sand in the mortar. This resulted in building collapse and death of several inmates. The Court held that improper work executed by the masons, whereby the sand was mixed in larger proportion and the consequent building collapse could not be basis for holding the accused guilty of criminal negligence since he had contracted out the task of construction those who were supposed to be skilled in that regard.

8.32 In *Rajkot Municipal Corporation's case* (*supra*) tortious liability was fastened upon a corporation because a road side tree fell on a pedestrian walking on the footpath, causing death to him. The suit was decreed and the Corporation's appeal was dismissed. The Supreme Court even while rejecting the arguments that statutory bodies could not be sued for damages and tort, proceeded to hold in that case, the forseeability of the damage could not attributed to the corporation. The Supreme Court held that:

> "*the concept of forseeability i.e. what the hypothetical reasonable man would have foreseen in the circumstances is ubiquitous in the tort of negligence. It is the foundation of the neighbour principle but it is also used as a test of breach of duty and remoteness of damage. The fact that particular consequences were unforeseeable may lead to the conclusion that the defendant's behaviour was not careless and even when negligence is patent, damage of an unforeseeable kind will be regarded as too remote and therefore not actionable…… One man's reasonable foresight is another man's flight of fancy and so the bounds of what foreseeable can be stretched or the narrowed as the case may be. The likelihood that a particular event may occur in a given set of circumstances may range from almost certainty to virtual impossibility, and in deciding whether it was foreseeable involves a choice.*

There is no fixed point on the graph at which the law requires people to take account of a possibility. It is not a totally unprincipled choice since the degree of forseeability required may be varied with the kind and extent of the damage, and the nature of the relationship between the parties. <u>The loss must be reasonably foreseeable which may mean that it must be foreseeable as a possibility or probable or more probable than not or likely or very likely</u>".
(Emphasis supplied)

8.33 The preceding discussion of case law on forseeability shows that every case would turn on the subjective factors brought before the court. Thus in *Muir (supra),* it was held that the spilling of hot tea in a narrow passage where six children were scalded was an unforeseeable instance since such an occurrence could not reasonably have been anticipated, at the place where the tea urn was being carried. Similarly *Bolton (supra)* was literally *a "bolt from the blue",* a cricket ball lustily hit by batsman striking someone standing in the highway. *The Oropessa (supra)* concerned the death of nine crew members of a capsized vessel who went in a separate life boat after the vessel was severely damaged, by another vessel. The owners of the vessel *Oropessa,* which caused the damage to the other vessel, whose crew had used the capsized lifeboat, were held responsible for the death of crew.

8.34 The above analysis would disclose that there cannot be any cast iron rule as to what would constitute foresight. Reasonable forseeability should be judged by itself having regard to the circumstances rather than the disputed action of the accused or the actors. In other words the question inevitably which the Court has to direct itself is to what would be reasonably foreseeable in a given set of circumstances, having regard to the proof before it.

As held by the Supreme Court there cannot be any fixed point on the graph at which the law requires people to take account of the possibility. The action resulting in damage or death or injury, the latter two categories being concerned with criminal negligence must be foreseeable as a possibility or probable consequence. Negligence, to be called criminal therefore, must always reach the stage of such failure to exercise the requisite, reasonable and proper care and precaution to guard against injury either to the public generally or to an individual, which is required to be judged having regard to all the circumstances out of which the charge has arisen, that it was the imperative duty of the accused to have adopted the course which he neglected or failed to adopt; such failure should be of such magnitude as to be regarded as a crime, and not merely a matter of liability, capable of redressal through damages.

Causation

8.35 The next important aspect to be discussed is causation, as extensive arguments were made by all appellants. Before taking up the discussion it would be necessary to note that the facts of this case have thrown up complexities in the understanding of criminal negligence crimes, perhaps without parallel in this country. Such crimes are uniquely intentionless, preclude *mens rea,* and punishment is based on consequence. Overwhelmingly, courts in India, in the decided cases cited before this court, were concerned with offenders who may be termed "direct actors" whose acts or omissions could be scrutinized in a fairly simple, straightforward and in a "linear" manner. This case, perhaps uniquely – presents the operation of more than one cause, or set of causes which culminated in the tragedy, on 13th

June, 1997. If the court were to accept the argument of one or the other group of accused (i.e the cinema management set of appellants, the DVB set of appellants, the statutory authorities' employees, accused in the case) the act of one would absolve the other of any responsibility. In other words, according to DVB employees, the *causa causans* for the deaths and injuries was the blockage of exits, bolting of balcony doors, shrinkage of gangways and blockage of a gangway, which were also in contravention of DCR 1953 and DCR 1981, that led to the horrific consequences. On the other hand, according to the cinema management and employee set of appellants, the *causa causans* was the negligent manner of repairs carried out on the DVB transformer, which led to a cable detaching, settling on the transformer fin, resulting in a slit, oil catching fire, and the consequent smoke, which choked those seated in the balcony. And yet, the fragmentation of the accident, detracts its inherent indivisibility. It has been proved that the sparking led to detachment of a cable, its falling down, causing a slit on the transformer, oil gushing out, and catching fire; the fire engulfing vehicles, and leading to hot smoke and toxic gases which rapidly sped upwards, due to a chimney effect, and the smoke entering the cinema hall from various points. The patrons in the balcony, unlike those in the first floor, were most affected; out of 302, 159 were affected by the smoke; 59 died. All this happened rapidly, *within half an hour*; there were hinderances in the means of speedy evacuation of viewers and patrons in the balcony, due to the deviations from prescribed norms. In effect, the causation theory propounded by each set of appellant, if accepted by the court, would, according to each of them result in being held blameless. The court, however,

while evaluating such contentions, has to keep in mind, two factors: firstly, the duty of care owed by each set of appellants in this case; and two the nature of duty and the standard of care, having regard to the fact that:

(i) two transformers were located in the cinema's parking area;

(ii) one, the DVB's transformer had caught fire in the morning of the accident;

(iii) the cinema hall had to follow a set of several regulations, which mandated more than a dozen safety precautions, that were to be in place or complied with, at the time of and during *each cinema show;*

(iv) all sets of appellants could be expected to know that a large number of patrons (to be precise, 1050) could be seated in each show, in darkness during the show, unaware of their surroundings, as they would be engrossed in the performance for which they were in the cinema hall. This heightened the risk to those patrons.

8.36 Causation is the "causal relationship between conduct and result." This means that causation provides a means of connecting conduct, complete with actus reus, with the resulting harm or result element. Causation applies only where a result is achieved. Determination of causation involves a two step exercise; one, establishing cause in fact, and two, legal causation. A method of establishing factual causation is the "but-for" test. The 'but for test' inquires 'But for the accused's act, would the death or injury occurred?' A shoots and wounds B. The inquiry then is 'But for A's act, would B have been wounded?' The

answer is 'No.' The answer then is that A caused the harm to B. The "but for" test is one of necessity. It asks was it 'necessary' for the accused's act to have occurred for the resultant harm to have occurred. The "but-for" test very often gives the right answers to causal problems, but at times it does not give the right answers. The first problem is that almost anything can be a cause. But for the victim of a crime missing the bus, he or she would not have been at the site of the crime and hence the crime would not have occurred. Yet in such instance, the victim's missing the bus is not intuitively causes of the resulting harm. This often does not matter in the case where cause is only one element of liability, as the remote actor will most likely not have committed the other elements of the test. Inspite of such limitations, the "but for" test has been applied in determining causal responsibility. Courts have qualified it by saying that causation is to be understood "*as the man in the street*" would (*Yorkshire Dale Steamship Co v Minister of War Transport* [1942] AC 691). The High Court of Australia supplemented this with a "common sense" approach, in *March v Stramare* (1991) 171 CLR 506. In the US, in *United States in State v. Tally*, 15 So. 722, 738 (Ala. 1894), the court ruled that:

> *"The assistance given ... need not contribute to criminal result in the sense that but for it the result would not have ensued. It is quite sufficient if it facilitated a result that would have transpired without it."*

8.37 Legal scholars too have grappled with the question of causation. HLA Hart and Tony Honore in their seminal work *Causation in the Law* proposed the test of sufficiency.

According to them something is a cause of that if it is a 'Necessary Element of a Set of conditions jointly Sufficient for the result'. This is known as the "NESS" test. A component of this NESS set is a "causally relevant condition". This becomes a "cause" where it is a deliberate human intervention, or an abnormal act in the context. An example is an accomplice to a murder who drives the principal to the scene of the crime. Clearly the principal's act in committing the murder is a "cause" (on the but for or NESS test). So is the accomplice's act in driving the principal to the scene of the crime. However the causal contribution is not of the same level (and, this provides some basis for treating principals and accomplices differently under criminal law).

8.38 The law intervenes in certain situations, and predicates that even if the accused is guilty for the cause, he nevertheless cannot be held responsible liable because in the circumstances he is not to be understood, in a legal sense, as having caused the death or injury. This is the effect of *novus actus interveniens*, which means a 'new intervening act' which may 'cut the chain of causation'. The effect of the principle may be stated that if a new event, either through human agency or natural causes, does not break the chain, the original actor is liable for all the consequences flowing naturally from the initial circumstances. If the new act breaks the chain, the liability of the initial actor (the man responsible for the "cause") stops at that point, and the new actor, if human, will be liable for all that flows from his or her contribution. "Proximate cause" which is associated with "causation" as a concept is beset

with its own share of problems. Prosser and Keeton are forthcoming in their dislike for the term "proximate". They say, (in *Prosser & Keeton on Torts*, § 42, at p. 273) (Quoted in *James Mitchell Et Al., v. Jose L. Gonzales Et Al* 54 Cal. 3d 1041; 819 P.2d 872), that :

> *"The word 'proximate' is a legacy of Lord Chancellor Bacon, who in his time committed other sins. The word means nothing more than near or immediate; and when it was first taken up by the courts it had connotations of proximity in time and space which have long since disappeared. It is an unfortunate word, which places an entirely wrong emphasis upon the factor of physical or mechanical closeness."*

8.39 In a similar vein, *United States v. Roosevelt Cooke,* 18 MJ No. 44387, CM 441428, (US Court of Military Appeals) quoted LaFave and Scott in *Handbook on Criminal Law:*

> *"In the criminal law too the situation sometimes arises where two causes, each alone sufficient to bring about the harmful result, operate together to cause it. Thus A stabs B, inflicting a fatal wound; while at the same moment X, acting independently, shoots B in the head with a gun, also inflicting such a wound; and B dies from the combined effects of the two wounds. It is held that A has caused B's death (so he is guilty of murder if his conduct included an intent to kill B, manslaughter if his conduct constituted recklessness). (X, of course, being in exactly the same position as A, has equally caused B's death.) So the test for causation-in-fact is more accurately worded, not in terms of but-for cause, but rather: Was the defendant's conduct a substantial factor in bringing about the forbidden result? Of course, if the result would not have occurred but for his conduct, his conduct is a substantial factor in bringing about the result; but his conduct will sometimes be a substantial factor even though not a but-for cause."*

It also quoted R. Perkins's *Criminal Law,* 698-701 (2d ed. 1969):

> *"It must not be assumed that negligence of the deceased or of another is to be entirely disregarded. Even though the defendant was criminally negligent in his conduct it is possible for negligence of the deceased or another to intervene between his conduct and the fatal result in such a manner as to constitute a susperseding cause, completely eliminating the defendant from the*

field of proximate causation. This is true only in situations in which the second act of negligence looms so large in comparison with the first, that the first is not to be regarded as a substantial factor in the final result. In one case, for example, the defendant by his ***criminal negligence*** *had created a risk of explosion in a building. The deceased, after being fully warned of the danger and urgently requested to stay out, went in and was killed. This death was held to be imputable solely to the negligence of the deceased and not at all to the negligent conduct of the defendant. In another case, while the driver of a horse-drawn vehicle did not even have the reins in his hands, a child suddenly ran in front and was killed. Erle, J., charged the jury that if by the utmost care on his part the driver could not have prevented the accident, he must be acquitted.*

In like manner the negligence of a third person may intervene in such a way as to be the sole cause of resulting death within the legal view. For example, a starter was criminally negligent in starting a second train too soon after the first had departed and the second train crashed into the first, killing a passenger. But this homicide was imputed solely to the negligence of a flagman who got confused in his signals and held up the first train until it was struck by the second."

8.40 G. Williams in his celebrated *Textbook of Criminal Law* (2nd ed. 1983), at pp. 381-82 says that:

"When one has settled the question of but-for causation, the further test to be applied to the but-for cause in order to qualify it for legal recognition is not a test of causation but a moral reaction. The question is whether the result can fairly be said to be imputable to the defendant. . . . If the term "cause" must be used, it can best be distinguished in this meaning as the "imputable" or "responsible" or "blamable" cause, to indicate the value-judgment involved. The word "imputable" is here chosen as best representing the idea. Whereas the but-for cause can generally be demonstrated scientifically, no experiment can be devised to show that one of a number of concurring but-for causes is more substantial or important than another, or that one person who is involved in the causal chain is more blameworthy than another…"

8.41 The courts have not hesitated to look beyond the "but for" or "proximate" cause

doctrine, wherever the circumstances demanded. Thus, in Aggregate *Limestone Company v. Robison* 276 ALA.338, 161 SO. 2d 820 (1964) the Alabama Supreme Court held that:

> *"Proximate means next in relation to the cause and effect, and, together with the word "remote" is used to distinguish between actionable and non-actionable negligence…Proximate cause is not the act necessarily nearest to the injury, but is an act which actively aided in producing injury as a direct and existing cause…"*

This understanding was approved in *Maxwell v. Southern Christian Leadership Conference* 414 F.2d 1065 US Federal Fifth Circuit Court (1969). In *Milwaukee and Saint Paul Rly Co-v. Kellogg*, 94 US 469 (1877) it was opined that:

> *"The true rule is, that what is the proximate cause of an injury is ordinarily a question for the jury. It is not a question of science or of legal knowledge. It is to be determined as a fact, in view of the circumstances of fact attending it.* ***The primary cause may be the proximate cause of a disaster, though it may operate through successive instruments, as an article at the end of a chain may be moved by a force applied to the other end, that force being the proximate cause of the movement, or as in the oft-cited case of the squib thrown in the market-place.*** *The question always is, Was there an unbroken connection between the wrongful act and the injury, a continuous operation? Did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury?* (Emphasis supplied*)*

8.42 In *R v. Hallett* [1969] SASR 141 the Full Court of the South Australia Supreme Court held that:

> *"The question to be asked is whether an act or a series of acts (in exceptional cases an omission or series of omissions)…. by the accused is or are so connected with the event that it or they must be regarded as having a sufficiently substantial causal effect which subsisted up to the happening of the*

event, without being spent or without being in the eyes of the law sufficiently interrupted by some other act or event."

8.43 In *R v Smith* [1959] 2 All ER 193 the appellant had been convicted at a court-martial of the murder of another soldier by stabbing him. The victim had been dropped twice while being taken to the medical reception station and was subsequently given treatment which was said to be incorrect and harmful. Lord Parker CJ, giving the judgment of the Court-Martial Appeal Court, rejected a contention that his death did not result from the stab wound. It was held that:

> *'It seems to the court that, if at the time of death the original wound is still an operating cause and a substantial cause, then the death can properly be said to be the result of the wound, albeit that some other cause of death is also operating. Only if it can be said that the original wounding is merely the setting in which another cause operates can it be said that the death does not result from the wound. Putting it in another way, only if the second cause is so overwhelming as to make the original wound merely part of the history can it be said that the death does not flow from the wound.'* (Emphasis supplied)

8.44 In *R v Malcherek, R v Steel* [1981] 2 All ER 422, it was argued that the act of a doctor in disconnecting a life support machine had intervened to cause the death of the victim to the exclusion of injuries inflicted by the appellants. In rejecting this submission Lord Lane CJ, after considering R v Smith, said:

> *'There may be occasions, although they will be rare, when the original injury has ceased to operate as a cause at all, but in the ordinary case if the treatment is given bona fide by competent and careful medical practitioners, then evidence will not be admissible to show that the treatment would not have been administered in the same way by other medical practitioners. In other words, the fact that the victim has died, despite or because of medical*

treatment for the initial injury given by careful and skilled medical practitioners, will not exonerate the original assailant from responsibility for the death.'

8.45 Some of these decisions were considered in *R v. Cheshire* [1991] 3 All ER 670. In that case, in the course of an argument in a fish and chip shop the appellant shot the deceased in the leg and stomach seriously wounding him. The victim was taken to hospital where he was operated on and placed in intensive care. While in hospital he developed respiratory problems and a tracheotomy tube was placed in his windpipe to assist his breathing. The tube remained in place for four weeks. The deceased suffered further chest infections and other complications and complained of difficulty in breathing. More than two months after the shooting, while still in hospital, the deceased died of cardio-respiratory arrest because his windpipe had become obstructed due to narrowing where the tracheotomy had been performed, such a condition being a rare but not unknown complication arising out of a tracheotomy. The appellant was charged with murder. At his trial, evidence for the defence was given by a consultant surgeon that the deceased's leg and stomach wounds no longer threatened his life at the time of his death and that his death was caused by the negligent failure of the medical staff at the hospital to diagnose and treat the deceased's respiratory condition. He was convicted, on the basis of responsibility for the death even if the treatment given by the hospital medical staff was incompetent and negligent. The House of Lords, in the course of its judgment, after discussing the two previous judgments and a judgment of the Victorian Supreme Court, held that:

"It seems to us that these two passages demonstrate the difficulties in formulating and explaining a general concept of causation but what we think does emerge from this and the other cases is that when the victim of a criminal attack is treated for wounds or injuries by doctors or other medical staff attempting to repair the harm done, it will only be in the most extraordinary and unusual case that such treatment can be said to be so independent of the acts of the accused that it could be regarded in law as the cause of the victim's death to the exclusion of the accused's acts.

Where the law requires proof of the relationship between an act and its consequences as an element of responsibility, a simple and sufficient explanation of the basis of such relationship has proved notoriously elusive.

In a case in which the jury have to consider whether negligence in the treatment of injuries inflicted by the accused was the cause of death we think it is sufficient for the judge to tell the jury that they must be satisfied that the Crown have proved that the acts of the accused caused the death of the deceased, adding that the accused's acts need not be the sole cause or even the main cause of death, it being sufficient that his acts contributed significantly to that result. Even though negligence in the treatment of the victim was the immediate cause of his death, the jury should not regard it as excluding the responsibility of the accused unless the negligent treatment was so independent of his acts, and in itself so potent in causing death, that they regard the contribution made by his acts as insignificant."

8.46 In *Empress Car Co v. National Rivers Authority* [1998] 1 All ER 481, the appellant company, E Ltd, maintained a diesel oil tank in a yard on its premises that drained directly into a river. Although the tank was surrounded by a bund to contain spillage, E Ltd had overridden that protection by fixing an extension pipe to the outlet of the tank so as to connect it with a smaller drum standing outside the bund. The outlet from the tank was governed by a tap, which had no lock. An unknown person opened the tap and as a result the entire contents of the tank ran into the drum, overflowed into the yard and passed down a storm drain into the river. The National

Rivers Authority preferred an information against E Ltd, charging it with 'causing' polluting matter to enter controlled waters from its premises contrary to s 85(1) of the Water Resources Act 1991. The justices convicted E Ltd. On appeal, the Crown Court upheld the conviction, holding that the escape had been caused by the way E Ltd had maintained its tank of diesel fuel and that it should have foreseen interference with its plant and equipment in view of the history of local opposition to its business. E Ltd appealed to the Divisional Court, contending that if the evidence was consistent with the tap having been opened by a stranger, the escape would have been caused by the stranger and it should have been acquitted. The Divisional Court rejected that submission and dismissed the appeal. E Ltd appealed to the House of Lords, contending, further, that 'causing' for the purposes of s 85(1) required some positive act and that the escape could not have been caused by any such act by the company. It was held:

> *"The first point to emphasise is that commonsense answers to questions of causation will differ according to the purpose for which the question is asked. Questions of causation often arise for the purpose of attributing responsibility to someone, for example, so as to blame him for something which has happened or to make him guilty of an offence or liable in damages. In such cases, the answer will depend upon the rule by which responsibility is being attributed…In answering questions of causation for the purposes of holding someone responsible, both the law and common sense normally attach great significance to deliberate human acts and extraordinary natural events. A factory owner carelessly leaves a drum containing highly inflammable vapour in a place where it could easily be accidentally ignited. If a workman, thinking it is only an empty drum, throws in a cigarette butt and causes an explosion, one would have no difficulty in saying that the negligence of the owner caused the explosion. On the other hand, if the workman,*

knowing exactly what the drum contains, lights a match and ignites it, one would have equally little difficulty in saying that he had caused the explosion and that the carelessness of the owner had merely provided him with an occasion for what he did. One would probably say the same if the drum was struck by lightning. In both cases one would say that although the vapour-filled drum was a necessary condition for the explosion to happen, it was not caused by the owner's negligence. One might add by way of further explanation that the presence of an arsonist workman or lightning happening to strike at that time and place was a coincidence."

8.47 It was stated, rather pithily, in Winfield and Jolowicz on Tort, (13th Edition (1989) 138 that:

"The rather unscientific way in which lawyers are apt to approach the problem (referring to causation) is shown in their use of metaphors about causation, such as chain, rivers, transmission gears, conduit pipes, nets, insulators of phrases expressive of it, such as "causa causans and causa sine qua non", "direct cause and intervening cause", "effective cause and ineffective cause", "nova cause interveniens"; but all these merely conceal the puzzle and do not solve it. In fact, neither metaphor nor catchword will release judges from the effort or agony of deciding each case on its merits with such held as they can get from some very general principles. This may not be systematic, but what is often forgotten by critics is that judges would no better if they tried to be more exact"

8.48 Intractable though the problem may seem, the question of what constitutes cause, where a continuous, unbroken chain of events is involved, has to be addressed by the court, by adopting a common sense approach. Of course, the court has to be satisfied that the act sought to be intervening is not so significant that it breaks the original chain, of causation, set into motion by the first act. The question always is, whether there was an unbroken connection between the wrongful act and the injury, a continuous operation, and if the facts constituted a continuous succession of events, so linked together as to make a natural whole,

or was there a new and independent cause intervening between the wrong and the injury. That this approach is also consistent with the law in India, is evident from the decisions in *Bhalachandra Pathe (supra)* and *Rustom Irani (supra)* that the duty of care, breached by an actor, having a sufficient or significant connection with the accident, resulting in death, constitutes rash and negligent act, and an offence under Section 304-A IPC. The Supreme Court's approach in both these judgments was not doctrinaire; a commonsense view was applied to what is "proximate".

8.49 Section 32 IPC defines an "act" as including an illegal omission; Section 33 says that "act" denotes as well a series of acts as a single act: the word "omission" denotes as well as series of omissions as a single omission. Section 36, in a sense takes the thought underlying both Sections 32 and 33 further, by saying that wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence. Unlike Sections 34 and Section 35, which imply application of a conscious and active mind, Section 36 allows for offences to be "caused" by acts, combinations of acts and combination of omissions, or combination of acts and omissions, in the absence of a mental element. It also extends to attempts.

8.50 Counsel for accused had urged that Section 36 was inappropriately applied by the trial court, since it can be pressed into service only if the part act, part omission or two separate acts, are performed or perpetrated by one single actor. Sections 32 and 33 concern themselves with what are acts, and clarify that series of acts also include series of omissions. They do not refer to anyone. However, Section 36 starts with the expression "Whoever" that is not limited to the singular, having regard to Section 13(2) of the General Clauses Act, 1897. Also, it, unlike Sections 32 and 33, adverts to "offence" thus signifying that it is, at once, clarificatory as well as independent of those two provisions. Clarificatory, to the extent that series of acts or omissions, if they cause an effect, amounting to offence, by part acts or part omissions or part act and part omissions, which are different from each other, nevertheless they are considered to be integral to each other, if they result in the same consequence. The fact that the illustration to Section 36 refers to acts and omissions by the same person, does not mean that it should control the provision itself; at best, it seeks to illustrate. The plain words of Section 36 are capable of a wider application.

8.51 It is therefore, held that where more than one cause operate independently to lead to the same result, the acts or omissions involved, so long as they are significant and "operative" to cause the event which is the offence, even if done by different persons would attract Section 36, IPC. It is therefore held that the combined operation of several causes, some acts, some omissions, including part acts and part omissions, can be considered in the context of the a charge under Section 304-A IPC, by reason of Section 36, regardless that

more than one person was responsible for them. However, each such act or part act or omissionor part omission must be proved as a significant factor in such "chain" or series of causes, as to be part of the whole. The role of each such act or omission must be integral to the entire incident, for it to complete the offence punishable under Section 304-A, 337/338 IPC.

IX CRIMINAL APPEAL NO. 794/2007: SUSHIL ANSAL & CR. APPEAL NO. 846/2007: GOPAL ANSAL

9.1 The question of control and management of Uphaar Cinema in the light of the unauthorized installation of transformer, structural deviations noticed and glaring inadequacies in the balcony, all of which played a prominent and significant part in the cause of death of 59 persons and grievous injury to 100 others has to be examined. This would become relevant in the background of the over-lapping and supplementary arguments made on behalf of accused Sushil Ansal and Gopal Ansal.

9.2 Counsel on behalf of accused Nos. 1 & 2 argued that both the brothers were not directors in the company nor were in any manner in charge of the affairs of the company at the time of the incident in 1996. While Sushil Ansal had resigned on 17.10.1988, Gopal Ansal served another brief period from 24.12.1994 to 30.06.1995. The cinema was licensed in favour of GPT ltd and thereafter in favour of Ansal Theatre and Clubotels (P) Ltd.; accused No. 1 was merely a representative licensee. Therefore, merely because they played a role in1973 in the installation of the DESU transformer and were found to have sought

permission for modification in the balcony, they cannot be personally held responsible for the fire and the subsequent death.

9.3 The trial court found that the appellants Sushil Ansal and Gopal Ansal although not designated as Directors on the relevant date i.e. 13.06.1997, were in real and effective control of the theatre and management of the company which owned it. To arrive at this conclusion the trial court examined and took into consideration several documents and circumstances, spanning about 25 years. The evidence and findings in this regard would be analysed hereafter.

9.4 It has been conceded by both Sushil Ansal and Gopal Ansal, in reply to their queries under Section 313 that they were Directors of the company continuously till 17.10.1988. In the case of Gopal Ansal, it is also not denied that he was a Director for another period between 24.12.1994 and 30.06.1995.

9.5 The Board of Directors in its meeting of GPT, held on 15.07,1972, resolved that (Exhibit as PW-103/XX), which reads as under :

> *".....Resolved unanimously that Shri Gopal Ansal be and is hereby authorised to sign all the document, drawings and other connected papers regarding submission of revised plans, applications for water and electric connections, licences, permission from time to time regarding Uphaar Cinema, Green Park Extension Market, New Delhi to all concerned authorities....."*

9.6 An application was made to the erstwhile DESU, (DVB) for the electricity connection of the cinema which is produced as part of file Ex. PW 100/M. On 02.02.1973 Sushil Ansal

as Managing Director of GPT, wrote to DESU agreeing to give two rooms for the DESU transformer. The said letter inter alia reads as follows :

> *"..... This is to confirm the discussions the undersigned had with you yesterday when we agreed to give you two rooms measuring 10'-6" x 30' and 10'-g" x 15' for your transformer and HT and LT panels. This accommodation we will give you at a nominal rent of Rs. 11 per year. We further undertake to execute the civil maintenance work.....*
>
> *It is therefore, requested to kindly get the transformer and HT and LT Panels and laying of necessary cables expedited so that the necessary connection can be given in time.*
>
> *For Green Park Theaters Associated (P) Ltd.*
> *Sd. Sushil Ansal*
> *(Managing Director)"*

9.7 On 20.02.1973 Sushil Ansal again wrote to DESU regarding its transformer (Part of Ex. PW 100/M). The said portion of the letter reads as follows :

> *.....Though we are installing our own transformer for our requirements, but during emergency you will give us current from your transformer on L.T. Supply for the sub-station to be installed at Uphaar cinema. We are giving you the space on the above undertaking.....*
>
> *For Green Park Theaters Associated (P) Ltd.*
> *Sd. Sushil Ansal*
> *(Managing Director)"*

9.8 License No.51, produced as Ex. PW 17/DB dated 24.04.1973 was issued through Sushil Ansal as Managing Director. At this stage it may be noticed that all subsequent renewals adverted to this license and also referred to licensee in this document. The material portion of the license reads as follows :

"..... FORM-A

The building/place known as Uphaar Cinema situated at Green Park Extension, New Delhi..... is hereby licensed under section 10 of the Cinematograph Act, 1952 as a place where exhibitions by means of a cinematograph may be given.

This license has been granted to M/s Green Park Theaters Associated (Pvt.) Ltd. (Rep. Licensee Shri Sushil Ansal, Managing Director), Green Park, New Delhi. and shall remain in force from 24.4.1973 to 23.4.1974 provided that the said M/s Green Park Theaters Associated (Pvt.) Ltd. (Rep. License, Shri Sushil Ansal,Managing Director) Green Park, New Delhi or any person to whom, with consent of the licensing the license is transferred continues to own or manage the cinematograph used in the said

Uphaar Cinema....."

9.9 On 19.06.1974 Sushil Ansal, Managing Director of GPT Limited (Ex. PW 69/BB) sought permission from the Entertainment Tax Officer to lease out premises on the ground floor of the cinema building for commercial establishments stating the place has already been sanctioned for a restaurant.

9.10 In the affidavit dated 21.03.1975 (part of Ex. PW 69/BB), it was stated by Sushil Ansal that :

> *"....I, Sushil Ansal Managing Director, Green Park Theatres Associated (P) Ltd. New Delhi and licensee of Uphaar Cinema, Green Park Extn. Market for the year 1975-76 have not without without the permission transferred the license or the licensed place or the Cinematograph not allowed any other person during the year 1974-75 to exhibit film in the licensed place. I am still the occupier of the licensed premises and owner of cinematograph ....."*.

9.11 Sushil Ansal likewise sought for renewal of licence on 02.04.1979 – a part of Ex. PW 69/CC. This document states that the original license No.51 dated 24.04.1993, due for renewal with effect from 24.04.1979 had been misplaced from the Head Office at Ansal

Bhawan, and requested for issuance of a duplicate license along with the annual renewal. Significantly, Sushil Ansal described himself as licensee in the said document.

9.12 By Ex. PW 15/I, Sushil Ansal authorized V.K. Bedi, Architect to discuss the issues with the authorities. The relevant part of the document is extracted below :

" LETTER OF AUTHORITY

I/We the undersigned hereby authorize Mr. V K Bedi (Architect) to deal, discuss and explain in connection of Building Plan on Plot/House No:.....Ward No./Block No: Green Park Theaters situated at New Delhi. I/We also authorize him to make necessary corrections in the above stated plan as required under the Building Bye Laws and to collect the sanctioned plan on my/our behalf.

For Green Park Theaters Associated Pvt. Ltd.
-Sd Sushil Ansal
Signature of Owner....."

9.13 Accused Gopal Ansal, acting as Director, GPT, wrote a letter on 24.05.1978 to the Entertainment Tax Officer, for permission to install an eight seater box. The letter is Ex. PW 110/AA 20 which reads as follows :

".... We are grateful to you for having sanctioned a family box for 14 persons at Uphaar Cinema quite some time back. You will appreciate that with the passage of time, the family is growing; we would , therefore, be grateful if you could kindly sanction us an additional private box comprising of eight seats. We wish to assure you that the same would be strictly for personal use. The necessary drawings for the same are enclosed herewith.

Hope you would consider the case sympathetically and accord the necessary sanction....."

9.14 On 06.12.1979 a show cause notice being part of Ex. PW 69 was issued for removal of 100 additional seats, permitted by 1976 notification. Gopal Ansal as a Director of GPT replied on 13.12.1979 (PW 100/AA-2), taking the following position:

> *".....It is surprising to note that the Administration without applying it's mind as directed by the Hon'ble High Court seems to have formed its view on the basis of some earlier inspection that all the additional seats installed by us would require removal. We will request you to please consider the case of our additional seats on merits. If the guidelines furnished by the Cinematograph Act, 1952 and reiterated by the Hon'ble Delhi High Court are kept in view, you will appreciate that the additional seats installed by us are within the Rules and accordingly not liable to be removed merely because the relaxation has been withdrawn. Without prejudice to the aforesaid contention, in any event, we submit that all the 85 number of additional seats in the Balcony and Auditorium are clearly within the Rules and cannot be said to be violative of any of the rules. We would request that after due intimation to us, you may kindly inspect the Cinema in the light of the High Court's order.*
> *We request you to give us a personal hearing before you take any final decision in the matter .....".*

9.15 On 29.07.1980 Gopal Ansal wrote a letter Ex. PW 110/AA 7 for permission to install 15 additional seats. This document has been discussed in the preceding portion of this judgment, dealing with deviations and changes in the balcony. Though this letter is sought to be objected to, its existence and genuineness receives corroboration by reference to it in subsequent, undisputed documents i.e. Ex. PW 29/S, PW 29/DS and Ex. PW 29/DV.

9.17 Ex. Pw 29/DV, the letter dated 05.09.1980 enclosing revised plan for installation of 15 additional seats which was finally granted on 04.10.1980.

9.18 On 11.05.1981, the DCP (Licensing) has issued a show cause notice to the licensee asking why the cinema license should not be suspended. Sushil Ansal sought for intervention

to ensure that patrons interests did not suffer, in the following terms, describing himself as licensee.

> *"In view of the above, it is requested that the operation of the suspension order may please be postponed by seven days and may become enforceable from Friday, the 17th July, 1981, beyond which no advance booking has been done nor would be done by us. As discussed with your, we agree that the order of suspension is acceptable to us and that we shall not appeal against this to the court of law. We would , however, leave it to you to review the matter.*
> *We shall be grateful for your co-operation at this juncture which will be in the larger interests of the public.*
>
> *For Green Park Theaters Associated Pvt.Ltd.*
> *(SUSHIL ANSAL)*
> *LICENSEE....."*

9.19 A show cause notice was issued on 28.05.1982 when five doors/gate in the cinema hall were bolted inside during film exhibition violating Rule 12 (8) of DCR, 1981. Gopal Ansal as Director of GPT replied on 04.06.1982 (PW Ex.110/AA-24). He mentioned the possibilities of such doors being bolted due to pressure from patrons or pressure from air conditioning. The said letter has been discussed in the previous section of this judgment dealing with "Safety Precautions in the Balcony". The above mentioned letter assures "*that utmost precautions would be taken in future".*

9.20 The car parking contract Ex. PW 56/A was signed by Gopal Ansal on 01.04.1988. This was proved by PW 56, the parking contractor.

9.21 According to the records, concededly, Sushil Ansal and Gopal Ansal also resigned from the Directorship of the company through a Board Resolution (PW 103/XX-1), yet, through letter dated 20.02.1989 (Ex.PW 98/C) Gopal Ansal intimated the names of three

persons as nominees, describing himself as Director. This letter when sought to be produced was objected to. The witness Mr. Phartyal mentioned that he seized the file and the signature of one Mr. Avtar Singh were obtained on the original. PW 107 Avtar Singh confirmed having signed the memo Ex. Pw 98/A. The said letter reads as follows :

"*22 February 1989*

The Entertainment Tax Officer
Office of the Entertainment Tax Commissioner
2 Battery Lane, Rajpur Road
Delhi

Sub : Nominee for Uphaar Cinema

Dear Sir,

Further to our earlier letters giving the names of our Nominees for Uphaar Cinema, we request you to kindly cancel the nomination of Mr. S.K. Bhatnagar as he is no longer working with us.

Also we would like to have the following person as an additional nominee for Uphaar Cinema.

Mr. Krishan Gopal Arora
Booking Clerk

The signature of Mr. Krishan Gopal Arora is attested hereunder.
Also we already have the following Nominees. Their signatures are also attested hereunder for your records:

Mr. K.L. Malhotra, Dy General Manager
Mr. R K Shrma, Manager
Mr. N S Chopra, Assistant Manager

Yours faithfully,
For GREEN PARK THEATRES ASSOCIATED (P) LTD
SD
(GOPAL ANSAL)
DIRECTOR

9.22 By Ex. PW 50/B a letter dated 03.03.1992, Sushil Ansal (who by then had resigned as Director of the company) sought for renewal of the annual license for the period 24.04.1992

to 23.04.1993 in describing himself as licensee of the Uphaar cinema. He also filed an affidavit. The same are as follows :

> *"We wish to apply for renewal of our license under section 10 of the Cinematograph Act 1952 for Uphaar Cinema situated at Green Park Extension , New Delhi, for the period from 24.4.1992 to 23.4.1993. In this connection we are sending herewith the following documents:*
> *1. Existing License no.51 dated 24.4.1973 (already lying with you)*
> *2. Affidavit*
> *We shall be grateful if you can renew our license for the period 24.4.1992 to 23.4.1993...."*
>
> *Affidavit :-*
>
> *'....I, Sushil Ansal s/o Late Shri Charanji Lal R/o N-148, _ Panchshila Park, New Delhi Chairman of Green Park Theatres Associated (P) Ltd 115, Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi 110001, am applying for renewal of License for the year 1992-93. I have not without permission, transferred the License or the Licensed place or the Cinematograph to any person during the year 1991-92 to exhibit films in the Licensed place. I am still the occupier of the licensed premises and owner of the Cinematograph....."*.

9.23 The accused Sushil Ansal, in response to the query under Section 313 (Question No.381) only stated that he could have been authorised to sign the letter, by the Board of Directors. He did not deny the letter; he did not also give any explanation why he was authorised to sign it. He described himself as licensee in the application and affirmed the affidavit in such capacity.

9.24 The Minutes of Board of Directors meeting dated 24.12.1994 disclosed that Gopal Ansal was Director and Sushil Ansal was a special invitee. The minutes resolved for appointment of Gopal Ansal as an Additional Director till the next annual general meeting.

9.25 A cheque being No.955725 dated 26.06.1995, for an amount of Rs.50 lakhs was drawn from the account of M/s Green Park Theatre Associated Pvt. Ltd. in favour of Mr. Sushil Ansal. The account being current account No.4129 was maintained with the Punjab National Bank. The said cheque was proved as Ex. 31/B.

9.26 According to the Board of Directors meeting held on 25.03.1996 Ex. PW 103/XX-3, Gopal Ansal was appointed as authorized to operate bank account of the company upto any amount. Three others were granted power to operate bank accounts for a sum not exceeding Rs.7,50,000/-. Six persons were conferred power to jointly operate account with any two of each of four upto an amount not exceeding Rs.2,50,000/-. Similar powers were conferred on the said persons, including unlimited power in relation to the opening and operation of a new current account.

9.27 Shri Gopal Ansal issued a cheque Ex. Pw 93/B for Rs.9711/- from the bank account of GPT, this was seized by memo Ex. 93/A. By this time the name of GPT has been changed to Ansal Theatres and Clubotels (P) Ltd., a fact recorded in the minutes of meeting held on 25.031996 adverted to earlier. The resolution of 30.06.1995, however, had recorded that Gopal Ansal resigned from the Board of Directors (Ex. PW 103/XX-3).

9.28 By two resolutions dated 04.09.1996 Sushil Ansal and Gopal Ansal were authorized and empowered to deposit title deeds of the company with the intent to create an acquitable mortgage to secure a term loan of Rs.40 crores. The second Board resolution authorized

Gopal Ansal and Sushil Ansal *inter alia* to operate various bank accounts of the company upto any amounts.

9.29 A cheque dated 30.11.1996 (Ex. PW 90/B) was issued by Gopal Ansal for a sum of Rs.1,50,000/- from the account of Ansal Theatre and Clubotels Limited.

9.30 By two office memos (Ex. PW 102/D-54 and PW 102/D-56) dated 18.12.1996, day to day activities of Uphaar cinema were sought to be delegated. The memo stated that erring officials would be dealt with severely if necessary by dismissal from service. These memo were also marked to "MD (APIL) for his information….". Significantly there was no Managing Director of Ansal's Theatres and Clubotels Limited and reference of AIPL appears to be Ansal's Properties and Industries Limited.

9.30 By Board of Directors resolution dated 31.12.1995 Sushil Ansal and Gopal Ansal were appointed and constituted as authorized signatory upto any amount, for operating the current accounts with the companies banks. This resolution is also contained in Ex. PW 103/XX-3.

9.31 By cheque Ex. PW 90/C dated 12.02.1997 Gopal Ansal sought to withdraw a sum of Rs.2,96,550/- from the account of Ansal Theatres and Clubotels (P) Ltd, payable to Chancellor Club.

9.32 By the minutes recorded at the meeting of Board of Directors dated 28.03.1997, *inter alia,* Sushil Ansal and Gopal Ansal were authorized to operate the bank accounts of the company upto any amount. The banks were authorized to honour and accept all cheques,

drafts, bills of exchange and negotiable instruments correspondingly. Other authorisation arrangements were made in respect of Canara Bank account at Hazrat Ganj, Lucknow, authorisation to open bank account with the Corporation Bank at Sushant Lok was separately made. Resolution No. 16 further stated that for the purpose of security of a loan sanctioned to Ansal Properties and Industries Limited to the extent of Rs.40 crores, equitable mortgage of the properties of Ansal Theatres and Clubotels Pvt. Limited could be created. Sushil Ansal and Gopal Ansal *inter alia* were authorized to sign documents including giving corporate guarantees and other necessary documents. This loan was to be disbursed to the said Ansal Properties and Industries Limited by Punjab National Bank, Tolstoy Marg, New Delhi.

9.33 The trial court had relied upon certain other documents, such as minutes of MD conference dated 27.02.1997 (Ex PW 98/X-4), 02.04.1997 (Ex PW 98/X-2), 02.04.1997 (Ex. PW98/C – File. Minutes dated 01.05.1997 contain in Ex. PW 98/C and 09.05.1997 contain Ex. PW/X-3.

9.34 The record shows that Ex. PW 98/C was seized under Memo Ex. PW 98/A. The seizure memo Ex. PW 98/A was signed by Mr. Avtar Singh, PW 107. He deposed to this effect. Ex. PW 98/C file contains the other documents which were relied upon by the trial court to underline the active involvement of Gopal Ansal. A brief discussion about these is necessary. It would also be essential to deal with the contention of the appellants in this regard.

9.35 Ex. PW 98/X-4, a letter written by accused Ajit Chaudhary, forwarded to the DGM (Uphaar). It encloses what is termed as MD's minutes, which are part of Ex. PW 98/C. This minutes/document list out various points discussed during the meeting held on 27.01.1997. The said minutes/document itself does not bear the signature of anyone and is not dated too. The covering letter dated 03.03.1997 describes the meeting as one held on 27.02.1997. The minutes record a variety of issues having been discussed including ones relating to fixing of responsibility upon various officials by the MD for furnishing a feasibility report, for advance booking counter; the fixing of responsibility for maintenance and repairs within the building, placed upon the GM (Construction), installation of improved version of sound system and financial application, advertisement and publicity, covering of empty show windows, etc., indicating the involvement of the M.D. Likewise Ex. PW 98/X 2 was signed by Ajit Chaudhary. It encloses the minutes of "MD Conference" held on 02.04.1997. This also lists out 11 matters which were discussed in the meeting and for which responsibility was fixed on various officials. The matter discussed included a photograph taken during the night placement of rope light, neon light, emphasis on maintenance of cleanliness of auditorium, proper display of items in the canteen, beautification, proper parking place in front of the cinema hall, scheme for installation of EPABX and so on. A list of 11 points discussed is recorded in the said minutes which are again undated and unsigned. They are part of Ex. PW 98/C. The third in this series is Ex. PW 98/X-3 dated 02.05.1997, it encloses the minutes of

meeting held on 01.05.1997. The letter Ex. PW 98/X-3 describes Mr. Gopal Ansal as MD in the Chair.

9.36 By letter dated 16.12.1996 (part of Ex. Pw 69 K), the Ansal Theatres and Clubotels (P) Ltd. intimated that the name of the erstwhile GPT has been changed with effect from 11.03.1996 and the Uphaar Cinema would be controlled by M/s Ansal Theatres and Clubotels (P) Ltd. A copy of the certificate of incorporation issued by the Registrar of Companies, NCT of Delhi and Haryana was enclosed. The letter adverted to the original license issued since 1973 and stated "*you may however, please note that there will be no change in the name of licensee of the cinema."*

9.37 Ex. PW 9/D-15 is the diary of the Ansal Group for the year 1997. It described a common corporate management which included Sushil Ansal and Gopal Ansal. The diary was seized by PW 78 Rajbir Singh by seizure memo Ex. Pw 78/F, which lists Ansal Theatres and Clubotels (P) Ltd., as part of the group company. Shri Sushil Ansal shown as Corporate Chairman. Apart from Uphar cinema, Charanjeev Charitable Trust is also shown as running Homeopathy dispensary in the Uphaar Cinema. That trust is also shown as part of the group.

9.38 The argument made on behalf of the accused Sushil Ansal is that company GPT owned the land as well as the cinema. The license issued for the cinema was also in favour of the company. It is only for the sake of convenience that Shri Sushil Ansal was described as a representative licensee. However, at all material times, the licensee continued to be in the name of the company. With effect from 1994, the company explicitly nominated Shri R.M.

Puri as its authorised person, which amounted to nominating someone under Rule 10, DCR 1953. In the circumstances, the trial court could not have concluded that the first two accused had any manner of connection with the company.

9.39 It was urged in addition that both the said accused had severed their connections with the company, the first accused Sushil Ansal as far back as in October 1988 and Gopal Ansal in 1995. The mere circumstance of their being authorised to operate accounts of the company was to do other specific acts did not clothe them with any real or effective power or invest effective decision making attributes upon them. In these circumstances the said two accused could not, by any strength of imagination be held culpable for the omissions found by the trial court. To the extent that the said accused had engaged in correspondence with the statutory authorities which were considered by the Court, they had done so in the capacity of the directors. That did not, in any manner, disturb the reality of the company being the licensee and owner of the premises. It was urged that the materials on record did not measure up to proof beyond reasonable doubt, the only standard applicable for a sustainable conviction, to implicate the said two accused for the offence of criminal negligence, and sustain a finding that the two accused were the directing mind or alter ego of the company.

9.40 It was urged that the said two accused could not also have been charged with the offences under Section 14 of the Cinematograph Act because their so called involvement had occurred, more than two decades prior to the incident. The cinema was under the effective control and management of all others which included a nominated Director. It was also

managed by a Board of Director, which had no connection with them. The materials, therefore, could not sustain a finding that the first two accused were the real directing or operating mind of the company. In other words, the trial court could not have held appellants guilty of the alleged acts which were clearly those of the company or at the highest attributable to others incharge and in control at the relevant time.

9.41 The arguments made on behalf of the appellants have to be dealt with at two levels:

(1) Whether the acts and omissions, which the trial court found to be culpable, are attributable to accused 1 and 2 or were only attributable to the company as a separate entity?

(2) If they were indeed attributable to these appeallants, whether such acts and omissions amounted to criminal acts inasmuch as they infracted Section 14 of the Cinematograph Act and also were of such nature and character, so as to breach the duty of care, attracting culpability under Section 304 A IPC?

9.42 No doubt in this case the land and the building in which the cinema is located was transferred to GPT. The evidence and materials indicated above disclosed that between 1973 – 1988 at all material times effective decision making within the company was with the first two accused. These decisions included the following :

(1) Installation of the DVB transformer, which was not authorised either by MCD or the licensing department;
(2) The closure of the right side gangway after the first notification of 1976
(3) Closure of the right side exit in the balcony, in 1978. Their request for this change was made by accused Gopal Ansal. This was ultimately granted as discussed in detail in the Section dealing with balcony deviations.

(4) The decision and request for re-arrangement of 37 seats which were directed to be withdrawn after the second notification of 1979.
(5) The request for installation of 15 additional seats, made through letter dated 29.07.1980 Ex. PW 29/DX. A modified request for placement of the said additional seats which was ultimately granted on 04.10.1980, Ex. PW 29/DV.
(6) Various letters/ replies were written in response to show cause notices, listing out deficiencies noticed by the statutory authorities at the time of inspection, such as the effect that the cinema doors were bolted from inside even during the time of show and other related matters;
(7) Applications for renewal of license made by accused Sushil Ansal described himself as licensee and also supporting such requests with an affidavit containing solemn declaration.
(8) The case of both accused Sushil Ansal and Gopal Ansal is that they ceased to be Directors with effect from 17.10.1988. Barring a brief stint as a Director during 1994-1995 as far as Gopal Ansal was concerned, this position continued till the fateful day i.e. 13.06.1997. It would be, therefore, necessary to examine more closely this contention in order to scrutinize whether the trial court findings are well founded.

9.43 As discussed earlier the trial court relied on certain circumstances such as the fact that in several minutes of Board of Directors for the period 1994-1995 to 1996-1997, both Gopal Ansal and Sushil Ansal were authorised to

> (a) operate bank accounts of the company upto any amount
> (b) deposit the title deeds of the company to crate acquitable mortgage, securing loans raised by other companies of the Ansal's group i.e. AIPL.
> (c) Ex. PW 103/XX-3 contains the minutes of meeting of the Board of Directors of GPT dated 30.06.1995. Item 12 records the resignation of Gopal Ansal and but at the same time it authorizes him to open a current account with the Bank of Baroda under the name and style of Ansal Theatres and Clubotels (P) Ltd., describing it as a division of Green Park Theatre Associated Pvt Ltd. The resolution authorizes Gopal Ansal to operate that account upto any amount.
> (d) The resolution dated 02.09.1995 (Ex. PW 103/XX-3) authorised Shri R.M. Puri all time Director of the company to perform, acts of management of the Uphaar cinema. These extended to appointing and dealing with personnel; correspondence on behalf of the company with labour authorities including, institute, conduct, defend, compromise and attending legal or quasi legal proceedings.

9.44 All the cinema licenses through issued temporarily for two months period continuously from 1986 onwards, referred Sushil Ansal as the licensee. All these are part of Ex PW 69/AA, Ex. PW 69/BB, Ex. Pw 69/CC.

9.45 Significantly the resolution sought to be relied on, by the accused, did not nominate Shri R.M. Puri as a licensee nor authorize him to act on behalf of the company as licensee under the Delhi Cinematograph Act nor authorizing him to act on behalf of the representative licensee to deal with the statutory authorities under the said Act. This aspect is of extreme importance in the letter written by Shri R.M. Puri. The letter nominating Shri R.M Puri issued on behalf of the company only described him as an authorised signatory. The letter also does not mention that he was being nominated in terms of Rule 10 of DCR, 1953/DCR 1981.

9.46 The application for renewal made on 03.03.1992 (Ex. PW 50/B) was signed by Sushil Ansal. This was accompanied by an affidavit executed by him describing himself as the occupier of the premises and owner of the cinema. Though Shri Sushil Ansal ostensibly divorced himself from the company by resigning from it with effect from 17.10.1988, he issued a cheque favouring himself from the company account, on 20.06.1995, for the sum of Rs.50,00,000/- . This circumstance was proved by the deposition of PW 91 and the letter, Ex. PW 91/B enclosing a copy of the cheque, issued by the Punjab National Bank.

9.47 Similarly Gopal Ansal after his resignation from the company issued two cheques (1) cheque dated 23.5.1996, for Rs.9,711/- (PW 93/B) and the other for Rs.2,96,550/-, Ex. 90/C.

9.48 Though having no interest or involvement in the company both Sushil Ansal and Gopal Ansal were authorized to operate all bank accounts except two specified bank accounts of Ansal Theatres and Clubotels (P)Ltd., by its board resolution 28.03.1996 (Ex. PW 69/C). By the same resolution they were further authorized to create corporate guarantees for securing loan of another concern, a sister company, i.e. Ansals Properties and Industries Limited to the extent of Rs.40 crores as well as create equitable mortgage for loan in favour of that concern.

9.49 In addition to the above circumstances, the trial court relied upon the inspection reports of the Delhi Fire Service for the period 1989-1997 (Ex. PW 31/DB, PW 33/E , PW 33/H, PW 37/M, PW 37/P, PW 37/U, PW 37/W, PW 37/Z. The Court relied upon the minutes of MD meeting produced along with Ex. PW-98/X-1, PW 98/X-2, PW 98/X-3, PW 98/X-4.

9.50 Before referring the effect of all these documents and conclusions that can be legitimately drawn, it would be necessary to deal with Ex. PW 98/X-1, PW 98/X-4 set of documents.

9.51 At the relevant stage the defence i.e. appellants 1 and 2 objected to their being marked as exhibits. It has also been noticed during the evidence that some originals of those documents went missing during the trial. The prosecution sought to substitute the missing

documents with photocopies. PW 107 testified to having signed upon the seizure memo PW 98/A. The objection to these documents is that to the extent they contain material deemed incriminating by the prosecution, there should be formal proof. Emphasizing this aspect, counsel contended that when one of other functionaries of the company, PW 114 deposed during the trial, none of these documents were put to him for corroboration. Furthermore it was urged also that the signatures of A.K. Chaudhary who is supposed to have signed on the covering letters exhibits PW 98/X-1, PW 98/X-2, 98/X-4, the documents were not proved, nor was any opinion taken by hand writing expert such as PW -92 led during the trial. In these circumstances neither the evidence of PW 98 nor of PW 107 were sufficient to prove the contents of the MD's document, it was unsigned and undated.

9.52 In a preceding part of the discussion relating to the mode of proof adopted by the CBI and accepted by the trial Court, this court had affirmed the marking of the files as collective exhibits. Such files were recovered from the statutory and official agency, empowered by law to maintain them in their official course of business.

9.53 The Court had relied upon the provisions in Sections 35, 74, and 76 of the Evidence Act to justify the production and admissibility of such documents as well as their relevance by the trial court. However, the same reasoning cannot be applied to Ex. PW 98/X-1, PW 98/X-4 series of documents and their enclosures. The enclosures to these documents which are critical as far as the accuse are concerned, bear no date and they are also unsigned. They were rnot ecovered from the custody of an official agency or a statutory authority

empowered to maintain such documents and someone had spoken about such documents being maintained in the normal course of official business, undoubtedly they too could have been considered and their contents, been taken into consideration by the Court. However, if the prosecution wanted to implicate the accused to the extent these documents seek to portray the involvement of Sushil Ansal and Gopal Ansal it was incumbent upon it to produce witnesses who could speak about those documents.

9.54 PW 114 was such a natural witness. For reasons best known to prosecution, these documents were not put to the said witness. In these circumstances, the Court is of the opinion that the said document ex. PW 98/X-1, PW 98/X-4 and its enclosures were inadmissible and their contents not proved in accordance with law.

9.55 That brings this Court to a discussion on the liability cast upon the Accused Nos 1 and 2 for the acts leading to their conviction under Section 304 A, for what they term to be acts of the company. Firstly they argued that since cinema and the building is owned by company, which has not been charged and that they were Directors at some remote point of time liability cannot be fastened on them for something which happened in 1997.

9.56 Speaking about the juristic or artificial personality of a company or corporation, while considering its relationship with a sister company or dependent concern, Justice Benjamin Cardozo in *Barkey Vs. Third Avenue Railway, 244 N.Y. 84, (1926)*

> *"The whole problem of the relation between parent and subsidiary corporations is one that is still enveloped in the mists of metaphor. Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it. We say at times that the corporate entity will be*

ignored when the parent corporation operates a business through a subsidiary which is characterized as an 'alias' or a 'dummy.'... Dominion may be so complete, interference so obtrusive, that by the general rules of agency the parent will be a principal and the subsidiary an agent."

9.57 The problem of fixing responsibility for an offence by corporations or companies has been grappled with, and has been confronted by Courts for long. In this context in 1972 the House of Lords in *Tesco Supermarkets Ltd. v. Nattrass* [1971] 2 All ER 127, Lord Reid, while considering the question of commission of an offence by a company, ruled as under :

"I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these; it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability."

9.58 This formulation was approved by our Supreme Court in *J K Industries limited Vs. Chief Inspector of Factories and Boilers*, 1996 (6) SCC 665. The Court also cited another decision, *Lennard's Carrying Company Ltd. Vs.Asiatic Petroleum Company Ltd,* [1915] AC 705, where the House of Lords held that

> *" A corporation is an abstraction. It has no mind of its own anymore than it has a body of its own; its active and directing will must consequently be sought in the presence of somebody, who for some purpose may be called an agent but it is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. That person may be under the director of the shareholders in general meeting; that person may be the Board of Directors itself or it may be, and in some companies it is so, that the person is an authority to coordinate with the Board of Directors given to him under the Articles of Association."*

9.59 The Supreme Court in *J K Industries* was called upon in an analogous situation to decide whether any director designated as an occupier in terms of the Factories Act, absolved the directors of any role and whether they could legitimately claim immunity from prosecution. The Court expressly negatived such a claim. The court also took note of the decision in the *Oleum Gas leak case (M.C. Mehta Vs. Union of India*, 1986 2 SCC 325) whereby the Supreme Court had ruled that

> *"hazardous or dangerous activities posing a threat to the health or life of members of the public, Chairman/Managing Director of the company should be compelled to furnish undertakings, to deal with eventuality of disaster mitigation through compensation".*

9.60 The Canadian courts have used *"alter ego"* doctrine to attribute *mens rea* offences to corporations. It was established by a decision of the Canadian Supreme Court in *Canadian Dredge and Dock Co. v. R* [1985] 11 RCSC 662 that not only the board of directors would be seen as the directing mind of a company but also the managing director or any other person to whom authority has been delegated by the board and that it is sufficient that the act is committed by a person on behalf of and within the capacity of the corporation.

9.61 Although not directly apt, yet it would be noteworthy to remember that our Supreme Court, in the five judge decision reported as *Standard Chartered Bank v. Directorate of Enforcement,*(2005) 4 SCC 530, rejected the theory of blanket corporate immunity from serious offences punishable with imprisonment. The argument was that such non-human actor cannot be sentenced to a prison term, in the case of a non-discretionary sentencing provision**.** The court held that:

> *"We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy."*

9.62 The factual material discussed above would show that the following decisions are attributable to the first two accused:-

1) The decision relating to installation of the DVB transformer
2) All decisions relating to re-arrangement of the seating in the balcony, which were held in an earlier part of the judgment to violate several mandatory provisions of DCR.
3) Closure or blockage of right side exit which effectively blocked the access to the right side stair case from the balcony;
4) Placement of additional seats
5) Parking contracts

6) Unlimited financial powers on behalf of the company, to bind it and create encumberance on its assets;
7) Decisions concerning commercial use of the building;
8) Decisions about the working of the cinema, on day to day basis,

9.63 The first two accused were concededly directors of the company and had engaged themselves on day to day functioning. Their involvement in the company continued even thereafter. If one were to take their argument on its face value there was no occasion for Sushil Ansal to continue being described as a licensee even in 1992 or hold himself out as such. He not only did so but permitted the company to do so, as well as the statutory authorities issuing no objections as well as approvals who described the licensee of the original license No.51 i.e. Sushil Ansal as the licensee or occupier of the cinema hall. Significantly enough he withdrew a large amount of Rs.50 lakhs in 1995 from the account of the company. As held by the trial court he was called as a special invitee to attend the meeting of Board of Directors. He along with Gopal Ansal continued to enjoy unlimited power to withdraw the amounts and operate the accounts of the company. Both of them were also authorized right up to the date of incident to operate such accounts and also create liabilities upon the company's property.

9.64 The position so far as Gopal Ansal is concerned is identical. According to the Minutes/Board Resolution Book produced in Court Ex. PW 103/XX3, he resigned from the company on 30.06.1995. He continued to enjoy same powers and almost unlimited powers to

withdraw amounts and operate accounts of the company. He was not fettered in terms of accountability to the company for the moneys withdrawn and utilized by him. Further to this, in at least two instances the bank accounts were operated ostensibly for the personal use of the Gopal Ansal have been placed on record.

9.65 The licenses even after the name of GPT changed in 1996 continued to remain that of the original license i.e. Sushil Ansal as is evident from Ex. PW 69/CC dated 16.12.1996. The letter dated 06.03.1997 by the licensing authority merely records that Shri R.M. Puri and Shri K.L. Malhotra would be authorised signatory for the company for operating the cinema and for dealing with the licensing authority. These cannot led to an inference that a specific nomination, in terms of Section 10 (2) was ever made.

9.66 The shareholding pattern of the company, disclosed through the Ex. PW 87/53 A, set of documents showed that the major/pre-dominant shareholding of the company continued to remain with the Ansal's family. Sometime Sushil Ansal and his family members were shown majority shareholders and another time other members of the family such as brothers were shown as shareholders. However, at no time any outsider was shown to hold any of the 5000 shares. These clearly pointed out that the company was closely owned and completely controlled by the Ansal's family. The change of name of the company from GPT to Ansal's Theatres and Clubotels (P) Ltd., likewise seems to be very fluid because since the licenses renewed and substituting (25.03.1996, 27.06.1996, 13.09.1996, 26.11.1996) till the date of the incident was in the name of GPT as is evident by Ex. PW 69/CC. Furthermore crucially

the evidence of PW 109 Pranav Ansal, one of the directors of the company as on the date of the incident as well as PW 113 V.K. Aggarwal, another director discloses their complete innocence about the affairs of the concern or the cinema enterprise. The minutes of the company reports filed with the Registrar and produced by him (Ex. PW 87/D-54), the said Pranav Ansal and V.K. Aggarwal were shown as Directors.

9.67 The depositions of Pranav Ansal (PW 109), according to the records of the company, was its director from 29.06.1996 till 28.03.1997, Subhash Verma (PW 114) who was a Director of the company as on the date of the incident, V.K. Aggarwal (PW 113) was the Director of the Company till 28.03.1997 and Dr. (Mrs.) Kusum Ansal (PW 115) was the director of the company till 25.03.1996, would show that though these Directors were shown as having attended the meetings on various dates, according to the minutes book Ex. 103/XX-3, they were unaware as to the decisions taken empowering some of them such as Shri V.K. Aggarwal to do certain acts on behalf of the company. PW 109, who according to the minutes of meeting of Board of Directors was conferred with powers was even in doubt as to whether he was actually a director in the company. In any event, PW 109 had no idea even any financial powers were delegated to him and was not aware what were the functions and duties of a Director. He even claimed being unaware whether Uphaar cinema was being run by Ansal Theatres and Clubotels (P) Ltd. Viewed from the context of such evidence even on the date of incident becomes very relevant, as the powers were conferred on these Directors by Board Resolution on behalf of Ansal's brothers.

9.68 The above analysis would show that the cinema enterprise was established, managed and controlled by the first two accused, for their benefit and their family. The appointment of Directors, whose nomination were carefully worded to avoid any reference to Rule 10 (2) of DCR 1953, and the corresponding rule in DCR 1981, is, in this context, not without significance. The intention of both first two accused was to remain in control of the company and the cinema property at all material times. The Court is therefore, satisfied that the findings of the trial court about the control, management and ownership of the Uphaar cinema vesting in reality with the first two accused is well founded. They cannot in the circumstances of this case hide behind the façade or mask of GPT or Ansal Theatres. Thus the decision of the corporate entity be it GPT or Ansal Theatres Pvt. Ltd., that situation continued as on the date of the incident.

Whether Section 313, Cr. PC. was complied with as regards Accused No. 1 and 2

9.69 This Court proposes to deal with a contention that the accused Nos. 1 and 2 were not questioned under Section 313 Cr.P.C. properly and that incriminating circumstances were not put to them fairly, to elicit their response. The trial court put as many as 846 questions separately to both the said accused. These ranged from the correspondence pertaining to initial installation of the transformer, various sanctions obtained for constructing the cinema hall, change in the plans; permissions obtained from various authorities by the cinema management from time to time, the change in the seating pattern in the balcony; the inspection reports by authorities who visited the cinema hall on various occasions; details

about 1989 fire incident; affairs pertaining to the management of the company; minutes book of the company reflecting decisions by its Board of Directors; shareholding pattern of the company; involvement of the Accused Nos. 1 & 2 in the affairs of the company, their letters, signing of cheques by them, powers conferred upon them; the material gathered during the investigation and produced by the prosecution, concerning the fire incident t in the morning of 13th June, 1997, the manner of parking of vehicles; spread of fire from the transformer room into various parts of the building; the structural deviations noticed and sought to be proved within the building, which aided the spread of smoke upwards and also obstructed free egress outside the building. Postmortem reports and expert reports were also brought to the notice of these accused.

9.70 By Question Nos. 617 and 618 the trial court put the seized file Ex. 100/M that contained the corresponding leading to installation of the DVB transformer in 1974 to the accused; by Question Nos. 725 and 726, the building plans 15/Y 1 to 15/Y 16 and 102/C 1 to 102/C 6 were put to the accused. The question Nos 124 to 129 specifically related to compliance with norms spelt out in Indian Standards of 1967 and 1981, read with Rules 62 and 67 of DCR 1981 and the circumstances as to how there were deficiencies in the DSVB transformer room. All the expert reports i.e. PW 24/A, 25/A, 35/A, 36/A, 48/A, 64/D and 83/A were put to all the accused. The details of what these experts stated in their reports were also put to the accused; similarly details of seized matter, described in these reports were specifically put to the accused (Question Nos. 104 to 112, 138 to 149, 204 to 214, 277

to 304). By question Nos. 8 to 13, 265 to 276, 166 to 170, 65 to 69, 56 to 62, 79 to 83 and 171 to 179, all concerned to structural deviations within the cinema building and the various unauthorized built up areas, including obstruction noticed during the inspection in the various reports Ex. 2/A, 17/B, 29/A, 39/A, 16/E, 17/G including maps and sketches prepared during the inspection carried out after the accident were all put to the accused Nos. 1 and 2. Questions 415 to 418 related to the car parking arrangements, the cinema had with PW 56, it also included parking contract. Question 680 was the parking contract dated 01.04.1988 seized by memo PW 56/C. By question 803 to 834 and 551, 580, 604, 648, 649, 656, 657, 757, 760, 775, 764, 767, 796 to 802 related to the ownership and the management of M/s GPT (which was later re-named as Ansal Theatres and Clubotles Pvt. Ltd.) Question No.486 puts Ex. 69/A the file containing 427 pages was put to both accused, this document was later marked as Ex. 69/AA. Question Nos. 379 to 381 and 382 to 385 related to the application for renewal of cinema license submitted on behalf of GPT; Question Nos. 737 to 739 pertained to the concerned provisions of the Cinematograph Act Sections 12, 14 and 16 and the circumstance that closure of gangways violated the norms. Question Nos. 740 to 749 related to various developments that led to changes in the seating pattern in the balcony including the installation of eight seater box, closure of one gangway, installation of additional seats, closure of right side exit and violation of DCR 1953. Question Nos. 361 to 369 related to fire safety norms, which the cinema was bound to follow.

9.71 As noticed in the discussion on the preliminary legal issues and objections raised by the accused, the object of Section 313 is to afford a fair opportunity to the accused to set forth his position and furnish an explanation to any incriminating material put to him. The law enunciated by the Courts is that every incriminating circumstance, discerned by the Court should be put to the accused in a comprehensible manner. The standard indicated is as if the accused is an illiterate and an unlettered man. In other words the Courts obligation is to put all circumstances, and indicate them in a simple and understandable manner. Any complaint about failure of the Court will have to be seen from stand point of prejudice, in the circumstances of each case, in the light of these principles. The terminology used in Section 313 "generally", has been construed as one meaning that all incriminating aspects have to be generally put to the accused.

9.72 When examining the arguments of accused about non-compliance with Section 313, the Courts have to see and be satisfied that the examining court put all incriminating and all relevant material to the accused. If any material not put to the accused, is used for arriving at a finding, that would be vitiating factor. In this case the extensive questioning under Section 313 adopted by the Court was doubtless cumbersome; no doubt the accused were asked to respond to several bulky documents. Apparently such questioning consumed a lot of time. However, the appellants in the opinion of the court have not been able to pin point how this method of questioning affected them or resulted in the trial court's finding suspect. One cannot be unmindful of the fact that the accused are well educated and successful

businessmen, they are also fairly conversant in English. The responses given by them in answer to several queries show that they understood the Court's line of questioning; they even claimed knowledge about Delhi Cinematograph Rules 1953 and Delhi Cinematograph Rules 1981. If for any reason they were under any misapprehension, surely they could be well sought clarification as to the meaning of the question from the Court. The queries recorded nowhere disclose any doubt in the mind of the accused or that the method of question was incomprehensible to them.

9.73 In these circumstances although the procedure adopted by the trial court may be considered cumbersome, that itself in the opinion of this Court is insufficient to render the line of question under Section 313 Cr.P.C. suspect or hold that finding and conviction of the accused Nos. 1 and 2 were for such reasons vitiated. The contentions of the accused Nos. 1 and 2 on this score are, therefore, devoid of merits.

9.74 The most crucial decisions of the company which had direct link with the deaths of 59 patrons and grievous injury to 100 others, are beyond any question or doubt, attributable to the first two accused. Thus:

(1) the decision to install a DVB transformer contrary to sanctioned plan and without permission or approval of the licensing authority and the MCD;
(2) absence of fire safety measures within the transformer room again contrary to regulations;
(3) the structural deviations in the cinema hall;
(4) use of several portions of the cinema hall for commercial purposes;
(5) negligent management of parking,
(6) the decisions taken to completely shut the right side gangway in the balcony, that reduced the number of gangways, correspondingly increase the seats and also crucially blocked the right exit

(7) failure to ensure proper supervision within the cinema at the time of the show, contrary to the mandate of DCR 1953 and DCR 1981

(8) failure to ensure functioning fire safety equipment that would have at the time same warned the patrons to leave the cinema hall immediately upon the outbreak of fire or an emergency and also facilitate their escape through proper lighting;

were directly attributable to the first two accused as owners and occupiers of this cinema hall. Their duty of care towards patrons and visitors did not end with any approval granted by one or the other statutory authority either upon a request or in a routine manner. The duty of care both in terms of the Cinematograph Act, Section 12 and in terms of DCR 1953 and DCR 1981 continued, for the duration of each show. That duty did not decrease or vanish merely because some employee was expected to be present, at the relevant points. When a large body of persons such as cinema viewers are closeted in a fully enclosed space having limited exits and who were virtually entrusting their life and well being to owners of the cinema, who effectively managed it, the duty of such owners is a very high one, even in the normal circumstances. In this case the risk factors kept increasing with each departure from the norms. Thus, the installation of the second transformer without authorization, an illegal act itself, increased the risk so far as patrons were concerned. Similarly outsourcing the parking to someone without any operational control or no direction created a further hazard. The closure of right side gangway, decrease in the number of gangways, increase in the number of seats, all in the balcony and the blockage of the right side exit, "stacked" these risks to unacceptable proportions.

9.75 Being prudent entrepreneurs, the first two accused should have ensured that there was no compromise, with any safety measures that would have imperiled the lives or health of any member of public. Instead the installation of seats blocked the right side exit and the consequent decrease in the number of gangways, were all at their insistence. Similarly the decision to place the eight seater box and permanently block the right side exit, increased the risk enormously. If one viewed one decision in isolation from other it could arguably be said that there was no danger. Yet each decision had to be seen in its aggregate or cumulative form. Thus, the most important decision to block the right side exit, which rendered the right stairwell inaccessible, was inherently dangerous. It also, in the facts of this case, constituted the foundation for stalking of all subsequent risk factors, which aggravated the danger. All these cumulatively amounted to rash acts which given the outbreak of an emergency – be it a fire incident or something else needing immediate and speedy evacuation of patrons, would have in all probability resulted in casualties. That such an accident did not take place for a long period of time is no excuse for the danger from the cumulative effect of these deviations. Likewise the fact that someone on the fateful day had bolted one or the other door may be another act of negligence on his part. This, however, did not deflect from the inherent dangerousness of the situation that existed within the balcony on that day. The Accused 1 and 2 could not under any circumstance have claimed ignorance of these established facts, or that this should not have reasonably occurred to them also because the two family boxes were placed in the cinema hall for their families exclusive case. The

second box was installed in 1978; it blocked the right side exit, of the viewers. These boxes, interestingly, had independent exit/entry points – the appellants were at pains to contend that they were not part of the balcony. The omission to maintain fire safety equipments in proper order or its unworkability at that time similarly might have contributed as another act of omissions. But the evidence clearly shows that patrons experienced difficulty in leaving the balcony; it was pitch dark, dense and thick smoke choked them. Many of them were exposed to this for as many as 15 minutes before they could leave the balcony. Some of them who did, came out and deposed. That there is no direct or primary evidence to say that the blockage of the right side hindered movement or that existence of less than prescribed number of gangways and placement of additional seats hindered or obstructed the patrons, again is no consideration. If one visualizes the situation which existed then, and keeps in mind the evidence of witnesses such PW 49 who deposed that three dead bodies were taken out of the balcony around 5.45 PM, the inherent and unacceptable nature of the danger posed by these deviations stands fully established.

9.76 The accused Gopal Ansal and Sushil Ansal undoubtedly were not present in the scene. The question, however, is not of the presence of actor at the scene of occurrence. In such cases the Court invariably sees the role played by the accused who caused the event. Thus in *Bhalchandra's case and Rustam Irani's case (supra)*, the Supreme Court did not feel any hesitation in convicting the owner who was not present at the site when the fatal accident occurred.

9.77 The lack of effective safety measures and the omission by the first two accused to put in any means of rapid evacuation is further heightened by the fact that an almost identical accident had occurred at the very same place i.e. transformer room in July 1989. A reading of the fire report recorded then which is part of the prosecution chargesheet and documents proved in this case. Ex. PW 88/B establishes that the hot gases escaped and spread up into the cinema hall which had to be evacuated. Then as in the instance of June 1997 the fire brigade had to rush in as many as 40 fire tenders and it took nearly two hours to control the fire. This incident should have served as a warning bell and the Accused Nos. 1 and 2, unfortunately it did not.

9.78 Apart from the decisions of the Supreme Court, mentioned above and discussed in the preceding part of this judgment, the duty of owners and occupiers of lodging houses and establishments have been discussed in two English judgments. Thus in *R.Vs. Gurphal Singh*, 1999 Crim LR 582, one Foster, a lodger who stayed in the accused's lodging house died on account of carbon monoxide poisoning. The poisoning was caused by room fire. A chimney in the room should have acted as a flew, it did not, since it was blocked. The chimney in the neighbouring room too had been blocked. Resultantly the carbon monoxide, instead of escaping of the chimney remained inside and killed the lodger. It was argued that on behalf of the lodging house owner, the appellant that his acts or omission if one assuming there to be one was not proximate one which led to the death of the lodger. Citing *Caparo Industries Vs. Dickman*, 1990 (2) AC 605, the Court held that the greater the awareness of potential for

harm the more likely it is that proximity test would be satisfied. It went on to hold that the proximity test focuses on broader relationship between the parties. After proceeding to hold that what had to be looked at

> "*is the totality of the situation and when considering whether or not a duty of care existed, it is not appropriate to stay out each part of that situation and then to consider, absent all the other parts there would be a duty of care. Nor is it useful in this context to concentrate on the phrase "assumption of responsibility".*
> *"……. In substance this is a case where those living in the room in which Mr. Foster died in a lodging house managed by Singh family. They were led to believe that the appellant and his father would take care that they were not poisoned by equipments provided by the family. The appellant was possessed of sufficient information to make him aware of danger of death from gas. He may not have had sufficient skill to be able to discover how the danger arose but he was responsible for reasonable space to deal with that danger if need by calling an expert help."*

9.79 The other decision *H & N Emanual Ltd.Vs. Greater London Council and another,* [1971] 2 All ER 835, was a case where one King and his employees lit a bonfire to get rid of rubbish, when, they were removing two pre-fabricated bungalows. That job had been contracted by them from the London County Council, owner of the site. Sparks from the fire flew over to the adjacent premises belonging to Emanual and burned them down. The latter sued the Council, which had contracted the job since the contractor was not possessed of means to satisfy the claim. After tracing the law from 1401 onwards Lord Denning held that Council could not escape liability and could be sued since it was the occupier. It was held that an occupier or owner in law is liable for escape of fire due to his negligence not only his servants but also his guests or anyone there with his leave or license. The only exception

drawn for immunity from negligence is whether the escape is caused by a stranger. The Court in the course of its judgment described an occupier, for the purpose of fire as follows :

> *"Any person was an occupier for the purposes of fire if he had a sufficient degree of control over the premises and could say with authority to anyone who came there, "Do or do not light a fire," or "Put out that fire". If he could, he was liable for negligence on the part of any person who came there."*

9.80 In this context of what is reasonably foreseeable, Justice Cardozo in "*Palsgraf v. Long Island Railroad, 248 NY 339 stated that:*

> *"If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming with reference to her, did not take to itself the quality of a tort because it happened to be a wrong, though apparently not one involving the risk of bodily insecurity, with reference to some else…, Even then, the orbit of the danger as disclosed to the eye of reasonable vigilance would be the orbit of the duty."*

9.81 The duty owed by theater owners to patrons, was spelt out in *Rosston Vs. Sullivan*, 278 Mass 31 (1931), where it was held as follows :

> "*the general duty to use ordinary care and diligence to put and keep this theatre in a reasonably safe condition, having regard to the construction of the place, character of the entertainment given and the customary conduct of person attending".*

9.82 This was affirmed in *Helen Upham Vs. Chateau De Ville Theatre Inc 380 Mass 350 (1980). In* Mostert V. CBL & Associates, et. Al., 741 P.2d 1090 (Wyo. 1987), the court had the opportunity to determine the nature and scope of the duty of care owned by a theater owner to its patron, against the factual backdrop of a 1985 severe thunderstorm and ensuing 100 year flood which hit the City of Cheyenne. The court held that the theatre owner as

business "invitor" owed its patron as "business-invitee" an affirmative duty to exercise ordinary case for the patron's safety not just inside the theatre but also including an obligation to advise the patron of off-premises danger that might reasonably be foreseeable. The Supreme Court of Canada too in *Brown V. B & F Theatres Ltd.,* (1947) S.C.R. 486, recognized that a theatre owner owed a duty of care to the patrons, and was obliged to take reasonable measures to ensure their safety. Though some of these decisions were rendered in the context of civil action, yet they are useful guides in discerning the nature of duty owed and the extent of reasonable foresight that can be attributable to the concerned actor. Our Supreme Court too has recognized situations where the standard of duty of care cast upon one entrusted with safety of others, is higher than in normal circumstances. This was so stated in *M.S. Grewal Vs. Deep Chand Sood* 2001 (8) SCC 151 where the dutyof care towards pupils, off premises was held to be greater than normal whn they were taken on picnic by the school establishment.

9.83 The first two accused who were instrumental in increasing by each decision taken over a period of time, the risk elements which ultimately caused several deaths and grievous injury, owed several duties that was spelt out by specific rules. That they are culpable for the breach of such Rules and Regulations, in another enactment does not in any manner preclude the examination by the Court, the consequence of such action. Section 26 of the General Clauses Act, 1897 provides that where an act or omission constitutes an offence under two or more enactments, offenders can be prosecuted and punished under any one of those but not

punished twice for the same offence. Therefore the act which constitutes an offence under two separate laws can be proceeded with together but not separately.

9.84 If the consequence of breach of the Cinematograph Act is spelt out by Section 14, that does not end the matter because the resultant breach of duty may be of such magnitude as to constitute a grave offence dealt with under the general Penal Law. As long as the necessary elements that constitute such general offence are satisfied, the Court will be unconstrained for the prosecution of a lower penalty by the particular law which in this case is Section 14.

9.85 Thus the duty element in this case is spelt out in unambiguous terms by various norms contained in Ist Schedule of DCR 1953 and DCR 1981. The duty as occupier to ensure fire safety was also clearly discernible under Section 12, which enacts an over-riding statutory concern in such matters. The decision to take measures that ultimately hindered escape of patrons exposing them to hot noxious gases which resulted in death was both a rash and negligent. The appellants contention of lack of reasonable foresight in such circumstances, cannot be accepted. In this context, although the legislature and rule making authority have used the expression "fire safety" nevertheless the concern is for the safety and security of the patrons. That the fire did not reach the balcony is irrelevant. What is relevant is that all fire safety measures which would have assisted in rapid evacuation and dispersal, utterly and miserably failed. More than half the people in the balcony were affected; 59 died; 3 bodies were recovered from the balcony by the fire officials.

9.86 As far as argument that the cause of deaths were not attributable to the accused since they could not have foreseen fire in the transformer which were made to be maintained and kept in proper repair by DVB's concern, that does not in any manner lessen or eliminate the role of the appellants. The appellants were instrumental in allowing the DVB to install the transformer; they also knew about its potential for harm when fire broke out in 1989. Then also hot gases entered the cinema hall and patrons were evacuated. Miraculously there was no harm. However, this warning was not heeded and instead the DVB proceeded to install a transformer of higher capacity. As men with reasonable foresight having regard to the propensity of such transformers to create harm, the first two accused could have taken appropriate steps and prevented the installation of the DVB transformer. After all, the cinema hall had proceeded to challenge the license suspended in 1983, due to concerns of fire safety. This fire outbreak should have underlined that concern. No doubt, the authorities do not seem to have approached the Court for variation of the interim order. However, the accused 1 and 2, as men of foresight, could have approached the Court and resisted the move to install the DVB transformer of a higher capacity. This omission to take any steps was crucial. Rule 23, DCR 1981 (which corresponded to Rule 21, DCR 1953) mandated that after the outbreak of any fire, before any alteration, intimation about the change had to be given to the licensing authority – about the change, and approval sought. This incident of 1989 afforded an opportunity to inform and seek evaluation of all authorities, about fire safety, specifically in the context of the DVB transformer which had caused the fire. Rule 23(4)

mandated evaluation of all electrical equipment, and change. There is none, forthcoming, about the DVB transformer. All acts – at least letters written to the fire department suggests that the cinema management were more concerned with the recovery of their monetary damages to their transformer and were content with that. This instance shows that there was a real and live danger in the parking lot which the appellants were aware of; they could also be reasonably expected to know about similar dangers. The appellants also knew that the entire parking lot had been given to a contractor, two transformers were located in the ground floor area where vehicles used to be parked. Both these were in their premises and some parts of it (crucially those areas where the transformers were located in the parking area) were not within their effective control. They had a greater responsibility, therefore, to ensure that such areas were managed effectively and efficiently so as not to pose any danger or threat to the patrons. Their failure on that score is also an act of rashness and negligence.

9.87 In another preceding part of this judgment the Court has held that these accused could not have banked upon the certificates and approvals issued periodically by the statutory authorities as they could not be taken in face value. The inspections, by the licensing department and the fire authorities as also the electrical inspector, completely glossed over the inherent danger which the patrons were exposed to on account of various factors. Therefore, in keeping with the decision in *Raj Kapur's case (supra) and Barik's case (supra)* those certificates are of no use to the appellants, in their submission that Section 79 intercedes to their benefit. Their acts of blocking the right side balcony exit, blocking the right side

gangway and the decrease in the number of gangways in the placing additional seats, all cannot be termed as acts of good faith.

9.88 As far as the argument regarding acts or omissions by the employees of Uphaar such as Uniyal or managers are concerned, attractive through such contention is, they do not detract from the magnitude or significance of the acts and omissions of the accused 1 and 2. The bolting of doors, and absence of a gatekeeper caused greater hindrances. However, in the larger context of causation it did not eliminate the essential cause for which accused 1 and 2 were squarely responsible, which they have ample time to eliminate.

9.89 It was argued that sustaining the conviction of accused Nos. 1 and 2 would be a travesty of justice, and the Court would be setting impossibly high standards for men with reasonable prudence and foresight, who carry on their enterprise through employees and managers. It had been urged that such high degree of responsibility, based on an extremely low threshold or standard of liability would be inappropriate in criminal law, since invariably courts would be unable to draw the line. It was stressed that the "reasonable foresight" and "proximate and efficient" standards are settled and time tested, and any variation to suit the facts of this case would be doing violence to the law.

9.90 This court has given its most anxious consideration to the submission of the accused. It is often said that decisions are dictated by the facts proved and the attendant circumstances. As noted earlier, the facts here have highlighted complexities which have perhaps not confronted Indian courts, or at least have not been dealt with in reported cases. While the

judgments cited by the appellants on proximity and forseeability are undoubtedly binding on this count, yet the reported decisions do not limit the meaning of these concepts. Section 304 A IPC speaks of a "cause". It conveys the concept of causation. Proximity can be seen as an important factor directing the mind of the Court, and conveying that not all possible causes, but those which are substantial or significant to the event, have to be considered. The preceding section discussing the law has elaborately explored decisions from India, and other jurisdictions on the issue. As held by the Supreme Court, there is no fixed point on the graph at which the law requires people to take account of a possibility. The law in India – discernible from the judgments discussed earlier, does factor for such liability of owners, or occupiers of buildings, who might in a sense not be "directly" involved with the incident. Nevertheless casual responsibility has been fastened for breach of duty of care, and consequent conviction for criminal negligence, if the act or omission is significant or operational.

9.91 In the complexities of the modern world, where enterprises and large operations are carried out at different levels and simultaneous acts, by different sets of people leading to one or series of connected acts take place, the proximity test as suggested by the appellants would only limit the law, where the text itself does not. This Court, by upholding the findings of the trial court is for these reasons, in no manner diluting the standards for judging criminal negligence liability.

9.92 Causation and proximity as considered in this judgment are not inflexible points capable of only the meanings suggested by the appellants. This Court is also satisfied apart from their being no dilution of standards that entrepreneurial responsibility for purpose of criminal liability has not been elevated to impossible or unreasonable levels. So far as the question of being unable to draw the line is concerned each decision cited in this case points to the inherent elusiveness and imprecision in defining what constitutes criminal negligence. Every term is but an indicator and the courts have to be alive and keen of the different elements that combine to fasten criminal negligence liability in a given case. As long as there is awareness of these elements and the Court is conscious about the standard of proof to be met with by the prosecution i.e. beyond reasonable doubt, there is no question of any confusion about norm or blurring of lines. Each case, through its set of facts and circumstances uniquely presents its own "lines"; this one is no exception. As held in *Mayor of Civil Court Vs. Moressa* [1893] 1 QB 359,

> "*the Attorney – General has asked where we are to draw the line. The answer is that it is not necessary to draw it any precise point. It is enough for us to say that the present case is on the right side of any line that could reasonably be drawn.*"

9.93 In the circumstances the trial court's finding about the conviction of Sushil Ansal and Gopal Ansal under Section 304 A read with Section 337, 338 and 36 of IPC and Section 14 of Cinematograph are justified. The conviction is, accordingly affirmed.

X CRIMINAL APPEAL NOS. 45 & 46/2008 N.S. CHOPRA AND R.K. SHARMA

10.1 The charge against accused/ Appellants R.K. Sharma and N.S. Chopra (as well as A.K Chaudhary since dead) was that they, on 13.6.97 at Uphaar cinema, committed culpable homicide not amounting to murder by causing death of 59 persons/p atrons beside simple and grievous hurt to about 100 persons/patrons who went to view the movie ' BORDER ' during the matinee show; that by their acts and omissions fire took place inside the transformer installed in the cinema building and highly toxic gases generated inside the cinema and spread inside the theatre. They were also charged with failure to inform, alert and facilitate the patrons seated inside the theatre to escape from inside the building and it was alleged that their act was in violation of rules; knowing that their acts was likely to cause death or such bodily injury which was likely to cause death and they, committed an offence punishable U/s 304 r/w 36 IPC.

10.2 As evident, the prosecution charged several acts against these set of accused. The first was that their acts and omissions led to fire in the transformer room, and resulted in spread of smoke and toxic gases, in the balcony. Two, they were charged failure to inform, alert and facilitate the patrons seated inside the theatre to escape from the building. The court charged them with knowing that their acts and omissions was likely to cause death or bodily harm likely to result in death. The trial court found the two accused guilty as charged.

10.3 The common argument of both appellants is that the prosecution was unable to prove how they had knowledge that any act or omission of theirs would lead to death, or cause such injury as would have inevitably resulted in death of patrons. It was also urged that the

prosecution failed to prove that they had fled from the scene immediately after the occurrence, as charged. The findings, therefore, were challenged as unfounded in fact.

10.4 The evidence relied upon by the trial court to convict these set of accused was Ex. PW-98/B, an Attendance Register for the months of May and June, 1997. This records the name of R.K. Sharma as reporting at 8-00 AM, on 13-6-97. The remuneration register Ex. PW.108/DB corroborates this position. However, Ex. PW-98/B does not show that N.S. Chopra had attended his duties on 13th June, 1997.

10.5 PW-63, the Security Guard, PW-85 Bagde, the Operator, PW-97, a Gatekeeper and PW-52, Sumer Singh, a police constable, all mention that both Chopra and Sharma were working as Managers, at the relevant time. The letter 22-2-1989 (in file Ex. PW-98/C) addressed to the licensing authority, by the GPT Ltd, says that Chopra and Sharma were Manager nominees of the company.

10.6 The above discussion would show that what the prosecution could prove was that Chopra and Sharma were Managers of the cinema hall. They were also shown to be managers, in the letter written by the company, to the licensing department. Witnesses spoke about their position as Managers. The documentary evidence pointed to the presence of accused Sharma, from 8-00 AM in the morning. However, N.S. Chopra's presence is not established, through any material, or witness.

10.7 The prosecution, however, has not been able to prove that either Sharma or Chopra fled the spot, after learning or coming to know that a fire had broken out, and smoke entered

in the cinema hall, with the knowledge that a large number of patrons were in the balcony and the hall. No one has spoken about these accused leaving the premises. PW-70 Azad Singh mentions that after inquiry, on the evening of the incident, these two persons, as well as others were arrested. No doubt, the eyewitnesses who deposed during the trial did mention about absence of anyone from the management, in the balcony to help or guide the trapped persons leave the premises. Yet, in order to prove the charge of culpable homicide, based on knowledge of one's conduct, the prosecution had to prove that these accused were present; that their duty was to be in the balcony at that time, and that they fled that place after becoming aware of the smoke in the balcony, with the further knowledge that patrons were trapped inside, and that their conduct would lead to death of others, or grievous injury which would result in death.

10.8 The Attendance Register shows that the concerned employees, whose presence for the day was marked, were present. That these two accused were managers is also spoken to by witnesses. However, these facts do not establish that they were absent from the site, and had fled it, after knowing about smoke having entered in the balcony. The prosecution thus, has not been able to prove-

(1) That the said accused fled the balcony,

(2) The approximate time when they left the balcony, or fled the theatre;

(3) The accused fled the balcony after the smoke entered it;

(4) Knowledge of the accused that their act would result in death of many patrons and injury to many others, which would result in their death.

(5) The nature of duties of the two accused.

10.9 To convict an accused of culpable homicide, under Section 304 Part II, the prosecution has to prove that the act complained of was done with the knowledge, with awareness – of the accused, about the consequence, i.e death or grievous injury of such kind as would result in death. Even if the accused were found to have been in the cinema hall at the time of the accident, their role in the transformer fire has not been disclosed, by any evidence. Further, as noticed earlier, their act or omission and their absence, if assumed, has not been proved to be coupled with the knowledge, as would inevitably result in death or grievous injury leading to death.

10.10 The distinction between murder, which is but a *species* of homicide, under the Indian Penal Code, and culpable homicide, is described by the Supreme Court in the following manner, in *State of A.P. v. Rayavarapu Punnayya,* (1976) 4 SCC 382:

> *"12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is*

"culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

10.11 Section 304, first part requires proof of intention to cause death or such bodily harm as would cause death; the second part requires proof that knowledge existed that such injury would result in death, or grievous injury likely to result in death. The crucial aspect in both cases, is the state of mind, i.e "intention" or "knowledge" of the consequence. Proof of such intention or knowledge has to be necessarily, of a high order; all other hypotheses of innocence of the accused, have to be ruled out. The prosecution here, glaringly has not proved when these two accused fled the cinema hall; there is no eyewitness testifying to their having been in the balcony when the smoke entered the hall, and having left it, which could have proved knowledge of the likely deaths and grievous bodily injuries. Thus, this court is of the opinion that proof of these appellants, i.e N.S. Chopra and K.K. Sharma, having committed the offence under Section 304, is not forthcoming. Their conviction under that provision cannot, therefore, be sustained.

10.12 The next question is whether the evidence on record is sufficient to sustain conviction of these accused under Section 304-A IPC. Here, the prosecution has to prove that the acts complained of were rash or negligent as to have *caused* deaths, and, in the case of Section 337/338, caused grievous injury to others.

10.13 As far as R. K. Sharma is concerned, the evidence establishes that he had reported for duty. The attendance register also discloses that he was in the cinema hall, when the DVB repairs took place at 11-30 AM, since he reported for duty at 8-00 PM. Azad Singh, PW-70 deposed having arresting him late night on 13-6-1997. In his statement under Section 313, Cr.PC, he contended having left the cinema hall at 4-30 PM. N.S. Chopra, on the other hand, according to the documentary evidence (Ex. PW-108/DB-1, found in Ex.PW97/C) had not reported for duty. In his statement under Section 313, he mentioned having reached the cinema hall at 5-30 PM, and not being allowed inside, since the fire was raging in the building.

10.14 R.K. Sharma was a manager; he is also adverted to in Ex. PW-98/C file containing the letter to the licensing department, dated 22-2-1989, whereby his name *as a manager* was intimated to the authorities. PW-63 mentions that after the repairs a decision was taken by the manager to resume the show. As a manager, he could be attributed with awareness about the fire risk in the cinema, particularly in the light of the 1989 fire incident. However, that by itself would be insufficient to prove his negligence, for a sustainable conviction under Section 304-A. The duty of care, since he was not owner, licensee or occupier, should have been clearly proved. There is no charge, under Section 14, Cinematograph Act, against this accused. The endeavour of the prosecution was to show that they were deemed to be aware of the dangers that lurked in the cinema hall, particularly the balcony, due to the deviations, and as manager should have taken reasonable care, supervised the cinema hall and balcony, and

have been present to guide the patrons to evacuate from the building, when the smoke entered the balcony.

10.15 The prosecution made no attempt to show the duties of either Sharma or Chopra. The evidence adduced showed that besides them, there were other managers- this is apparent from the register Ex. PW-98/B and Ex. PW-97/C. These other Managers, as on 13th June, 1997, were M/s Rohit Sharma and D.D. Sharma- they were present on the fateful day. The other two were K.L. Malhotra, and Ajit Chowdhury, both of whom were accused, but died later. R.K. Sharma is shown to have reported to the cinema hall at 8-00 AM; PW-97 no doubt says that he was a manager. Apart from that, nothing was elicited from him, or even PW-114 suggestive of whether either of these accused had the duty of supervising personnel deployed in the gates and exit points. In the statement under Section 313, Cr.PC Sharma contended that he left the cinema hall at 4-30 PM and that his duties were to ensure that collections (i.e money collected during shows) were deposited; he claimed to be a Marketing Manager, unconnected with the operations in the cinema. So far as N.C. Chopra is concerned, the documentary evidence does not reflect his presence in the cinema hall during the fateful day. His explanation in the statement under Section 313 Cr.PC. was that he reported for duty at 5-30 PM, but was not allowed to go in, due to the raging fire.

10.16 The established facts of this case leave no room for doubt that there was a systemic failure, of colossal proportions, in the management of the cinema. No doubt, there was supervisory breakdown, without which the gates could not have been left unmanned, and

bolted, in the manner the events unfolded. Yet, to fasten criminal negligence liability on anyone, on the basis of his facilitating such acts, due to omissions, or supervisory failure, the duty element has to be proved; equally the magnitude of breach and forseeability of the accused have to be established beyond reasonable doubt, through credible and clinching evidence. No doubt, cinema managers and personnel were not present, according to eyewitness accounts. Yet, that cannot be the sole basis for convicting either Sharma or Chopra – in the case of the latter, there is no evidence of his presence and breach of duty. In the case of the former, even the excluded evidence – Ex.PW-98/X-1 to Ex. PW98/X- 12, characterized as Minutes of MD's meeting do not refer to either of these accused; they refer to others specifically by name. PW-97 also does not say that these two accused had the responsibility of overseeing or supervising what went inside the cinema hall, before, and during each show or that they had the duty to oversee security measures. The hierarchy within the cinema hall, crucial in this case, to show whether Uniyal the gatekeeper had to report to both or either of them, has not been proved. PW-63, who deposed about the morning incident, merely mentioned that Shri Sharma was present; however, he specifically deposed about the role of K.L. Malhotra in connection with the decision to start the morning show, after the DVB transformer had been repaired around 11-30 to 12-00 AM.

10.17 The totality of the above circumstances no doubt points to complete managerial and supervisory failure in the cinema. Such inaction is certainly culpable, and points to grave lapses. This undoubtedly was an important and significant part of the causation chain. Yet, to

convict the accused R.K. Sharma and N.C. Chopra, there should be more convincing proof of involvement. At best, there is evidence of suspicion of their involvement. Yet, no attempt to prove that they were present, and did not take any effective measures to evacuate the patrons, which they were bound to do, in the normal course of their duty, has been made. Mere proof that these accused were Assistant Manager, and Manager, as on the date of the accident, and that one of them had reported earlier, during the day, is not adequate to prove that they caused death by criminally negligent, or rash act. There was failure on the part of the trial court to notice that the two vital aspects, i.e duty and breach of that duty of such scale, as to amount to an offence. Their appeals are entitled to succeed. These appellants have to, therefore, be acquitted of the charges. Their conviction is consequently set aside.

XI. CRIMINAL APPEAL 66/2008 : MANMOHAN UNIYAL

11.1 The Trial Court had convicted the Manmohan Uniyal, the gate keeper of the offences punishable under Section 304 Part-II i.e. knowingly committing an act that would have caused death. It had reasoned that being a gate keeper, Uniyal was bound to stay at his post and was duty bound to help the patrons escape and to facilitate their exit from the balcony. On the basis of oral testimony of certain witnesses, the Trial Court concluded, firstly, that the doors in the balcony were bolted, secondly, that Uniyal, the gate keeper was not present there to assist the patrons to safety or indicate at least the means of escape and thirdly that he fled the scene.

11.2 PW-97, Bharat Singh was a gate keeper in 1997 in Uphaar Cinema. He deposed that routinely, gate keepers, who were about 14, were on duty from 9 A.M. to 5 P.M. and the second shift was from 5 P.M. till the end of the show. He identified Uniyal who was in the Court as a gate keeper. According to the witness, a duty list was prepared and gate keepers used to depute themselves as to who would be working in the balcony and who would be on duty in the hall. He identified the signatures of Manmohan Uniyal and his own signatures, at points A & B in Ex.PW-97/A. Ex.PW--97/B-1-B-20 were also proved by this witness. They were duty rosters signed by their respective staff. In addition Ex.PW-97/C, an attendance register maintained by the cinema hall was also proved.

11.3 A look at Ex.-PW-97/B-1 to B-20 reveals that duty slips/rosters for different parts of the cinema halls had been printed. There were two slips for each day – one for the morning shift and the other, for the evening shift. Ex.PW-97/A is the duty roster for 13.6.97; this was seized along with the other duty rosters, on 19.6.97. The other duty rosters Ex.PW-97/B-1 to B-20 also seized on the same date, are for the preceding 11 days i.e. 2.6.97 to 12.6.97. A co-relation between these duty slips and Ex. PW-97/C, the attendance register disclose that Manmohan Uniyal attended on all the 11 days; he consistently worked as the gate keeper in the balcony in the morning shift. The rosters Ex. PW-97/B-1 to B-20 show that the evening gate keeper in the balcony was Pitamber Jha. The attendance register would show that 12.6.1997 was the Pitamber Jha's day off. There is no entry on his having returned to duty on the 13.6.97. The most contemporary document seized at the earliest point of investigation

thus established that at the relevant point of time, Uniyal was working as gate keeper in the balcony and that Pitamber Jha who in the normal course should have relieved him on the 13.6.1997 had not yet reported for duty.

11.4 The earlier discussion and findings of this Court have showed that everything was normal till about the interval and that an explosion was heard ten minutes later after which smoke entered the balcony. It was urged on behalf of Uniyal that even eye witness accounts did not pin pointedly state that there were no staff members of the cinema hall and that the prosecution was unable to establish whether he was a gateman or torchman and further that he was never identified by anyone. It was lastly argued that Pitamber Jha, his reliever had in fact reported and that his withholding from the trial, amounted to unfairness since relevant evidence was kept away from the Court.

11.5 PW-3, PW-7, PW-8 & PW-11, all eye witnesses who experienced the effects of hot gases and smoke in the balcony, deposed about the exit gates being locked or shut. PW-49 corroborated this when he said that the foyer door had to be forced open by his officers and that there was lot of heat and smoke. The eye witnesses also deposed that there was no help in the balcony at that time to assist people escape or at least facilitate or guide them to easily exit from the staircases.

11.6 Rishi Arora PW-7 deposed that he and his sister were trapped in the balcony for 10-15 minutes and it was difficult to breathe. He also clearly deposed that there was no gate keeper or torchman, though he admitted lack of awareness as to who were from the management.

He confirmed his version about absence of any help from gate keeper or torchman in the balcony when the smoke was present. PW-11 also confirmed this and stated that the patrons near the balcony door had to push it open. The doors were locked or bolted. This witness also mentioned about efforts by people to get out which resulted in their pushing each other.

11.7 From these eye witness accounts and the evidence of PW/97 who was not cross examined by Uniyal, as well as the documents PW-97/B-1 to B-20 and 97/C, the prosecution was undoubtedly able to establish that Uniyal had reported for duty on the 13th of June, 1997; his duty was in the balcony and that neither he nor others expected to be in the balcony were present when the smoke was detected there. It has also established that the balcony doors were bolted and had to be broken open by the patrons; the foyer entry door was broken open by the Fire Brigade employees.

11.8 The question which arises is whether these established or proved facts amount to the crime punishable under Section 304 Part-II. In order to, for any Court, conclude that such case has been proved beyond reasonable doubt, it is necessary for it to be convinced that the accused did that act with the knowledge that it would in all likelihood, result in death or cause such bodily injury as would be likely to cause death. It is, therefore, crucial that the accused must be aware or conscious that his act is of such a nature as would in all probability cause death or such bodily injury which would in all probability lead to death. Undoubtedly the knowledge of the act on the part of the offender and likely result would not only depend on what he did but also on the other circumstances.

11.9 The knowledge standard required of Section 304 IPC to lead to conviction should be of a high order. The accused Uniyal was nowhere proved to know that his absence, or locking the doors would inevitably lead to death or injury to patrons. The judgments, cited, i.e. *Shamsher Khan, Keshub Mahindra*, etc. require such proof of knowledge on his part. What is proved here is absence, bolting of exit doors, leading to obstruction. That Uniyal knew that smoke had entered, and yet fled the scene, and that he knew that smoke would enter the balcony despite which he bolted the doors and left the balcony has not been proved.

11.10 In the present case, the prosecution has been able to (as held earlier) prove that Uniyal reported for duty; the duty was from the morning; his reliever Pitamber Jha who used to report for the evening shift was not recorded as having reported. The evidence pointed to this pattern of shifts for the previous ten days whereby Uniyal worked in the morning shift and Pitamber Jha in the evening shift. It also proved, through several eye witness accounts that the exit gates as well as foyer entry gate were bolted or shut and that no gate keeper was at hand when the smoke entered and the patrons had to be evacuated.

11.11 However, these facts are the opinion of the Court, insufficient to return a finding that Uniyal abandoned his post knowing fully well that such act would result in death of grievous bodily injury that would result in death. The charge framed by the Trial Court was that Uniyal fled from the cinema hall building after getting to know about the fire, without unbolting the door. This significant leap from the reckless or rash act of bolting the door (when as many as 300 patrons were present) to knowledge that such act would almost

inevitably result in death, underlined by the accused' fleeing the site is unsupported by any manner of evidence.

11.12 No witness testified the precise point when Uniyal left the scene. It is possible that he left immediately upon seeing the smoke; it is equally possible that he had left the balcony before the accident and had gone elsewhere. This point is crucial for a finding of guilt under Section 304 Part-II because nature of the crime is dependent on the action or omission alleged. The prosecution has not even shown when Uniyal was arrested; and whether he was arrested from the scene. These crucial omissions or gaps in the prosecution, in the opinion of the Court, have to enure to the benefit of the accused who cannot be convicted of the offences under Section 304 Part-II.

11.13 The above finding in respect of Uniyal is, however, not dispositive of the issue. The facts as found point a grave dereliction of his duties. His reliever Pitamber Jha had not reported. Whether Pitamber Jha was himself negligent or whether his evidence was crucial or not, cannot obscure the fact that Uniyal as the gate keeper was expected to be present at all times during the show. The prosecution has established that the gates could not be opened as they were bolted. The foyer gate was in fact broken open by the Fire department officials. These two i.e. the action in bolting the door (when 300 patrons were watching the show) and the omission i.e. absence from duty compounded the woes and miseries of the patrons who found it extremely difficult to escape.

11.14 Section 222 of the Criminal Procedure Code enacts that where a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it. Section 222 (2) says that :

> "*when a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of a minor offence although he is not charged with it"*

11.15 The question of legality of conviction by a Court of accused to a charge not made against him was first discussed in *Willie (William) Slaey v. State of Madhya Pradesh,* 1955 (2) SCR 1140 in the backdrop of Section 535 and 537 of the Code of Criminal Procedure 1898 which corresponds to Section 464 and 465 of the present Code. The Court underlined that in cases where accused are convicted of offences they are not charged with, the Courts primary concern should be whether the accused had a fair trial; whether he was aware as to what he was being tried for and whether the main facts sought to be established against him were explained fairly and clearly and whether he was given a full and fair chance to defend himself. If these considerations are fulfilled, the Court may convict the accused of an offence under Section 222 (2). This was again emphasized in *Bhoor Singh v. State of Punjab* 1974 (4) SCC 754 where quoting *Nanak Chand v. State of Punjab* AIR (1955) SC 274, it was held that the essence of the matter was that the law is not a technically formulae of words but whether in such cases the substance of the matter was explained to the accused and whether he understood what he was being tried for. This view has also been followed in other cases,

such as *Kammary Brahmaiah v. Public Prosecutor* AIR 1999 SC 775. Therefore, the Court's enquiry should be ascertained whether the facts which may prove the ingredients of another minor offence in relation to that which the accused was charged with at the trial have been proved. While doing so, care has to be taken by the Court to satisfy itself that the essential facts which constituted the offence must have been put to the accused in his explanation, during the trial proceedings.

11.16 In this case, it has been held in the preceding part of the discussion that prosecution was able to establish that a short while after the interval, an explosion took place and smoke entered the balcony. At that time when patrons tried to escape, they faced obstructions because the doors were bolted/locked. It is also established that according to the duty roster for that day as well as the previous 11 days, Uniyal was the gateman. More crucial Uniyal was not in the balcony at the relevant time when the smoke entered. The prosecution could not, however, prove that he had left the balcony with the knowledge that smoke had entered it and the conviction under Section 304 Part-II cannot be sustained. However, being a gatekeeper, it can be reasonably expected that he ought to have remained at his post during the show, to help the patrons ordinarily and also to attend to them in precisely kind of emergency that actually arose on that fateful day. Uniyal in answer to question No.3 under Section 313 did not deny his presence and the show commenced. He, however, stated that he had handed over charge to Pitamber at 5 PM and that all lights were on and foot lights were also on. He also admitted in response to question No.14 that 2 or 3 times light went off

but added that his reliever had joined the duty after which he left the duty at 5 'O' clock. He maintained the same position in answer to question No.27. The other incriminating circumstances relating to seizure of attendance register, duty roster, slips etc. were all put to Uniyal. He was thus given full and fair opportunity to answer to the charges.

11.17 The question which has to be considered is whether Uniyal's absence from the balcony was a rash and negligent act. Being a gatekeeper, he was duty bound to be present at all times. The ocular evidence establishes that there was no gateman when the time arose for assistance of patrons. The duty roster slips and attendance register do not corroborate Uniyal's version of being relieved by Pitamber. Although Pitamber was cited as a witness, his non-examination in the opinion of the Court did not detract from the petitioner's illegal omissions. If indeed the appellant felt prejudice it was open to him to move the Court for examination of such witness. The absence of Uniyal resulted in the doors which had been bolted being unmanned at a crucial time. All eye witnesses who deposed at the trial and who had attended the performance, consistently testified to the difficulties in getting out of the cinema and being exposed to the hot noxious gases. As gateman Uniyal had a duty to care towards the patrons to ensure the safety in the event of a fire incident or any other untoward emergency requiring swift evacuation. That duty is a common sense legal duty owed by him to all the patrons who were watching the cinema performance. Being entrusted with the job of gatekeeper he could reasonably foresee that in his absence having regard to the conditions which existed i.e. blockage of right side exit and bolting of doors from within, would have

gravely hindered the smooth and easy exit of at least 300 patrons watching the cinema performance. In the event of an emergency, such absence amounted to an illegal omission; his act in bolting the door and leaving the place was also an illegal act, endangering the safety and public health of several persons. Both cumulatively endangered public safety and were rash acts.

11.18 Being a gate keeper Uniyal was expected to act responsibly. His action in bolting the door was a rash act. He was under a duty not to do anything at any time during the show which impeded easy access or obstructed the exits. His further absence from the site was also reckless act being a gate keeper. He could have reasonably foreseen, that in the event of some emergency, (whether it was through fire or smoke or anything else) which needed rapid or immediate evacuation of the patrons watching the move in the balcony, it would have been extremely difficult for them to escape. Equally he could have foreseen that being a gatekeeper, he was best informed about the exits in the cinema hall. This assumed great importance because the right side exit was blocked. He could have, were he present, opened the doors, and guided the patrons to leave through the staircases, for speedy evacuation. This breach of his duty which hindered the movement of patrons, caused several deaths. It clearly amounted to criminal negligence punishable under Section 304A; he is also guilty of Section 337/338 read with Section 36 IPC.

11.19 In view of the above discussion, the Court is of opinion that even though Uniyal conviction under Section 304 Part-II cannot be sustained, the materials on record are sufficient to convict him under Section 304-A read with Sections 337/338 and 36 IPC.

XII. CRIMINAL APPEAL NO. 4/2008: MR.H.S. PANWAR

12.1 The appellant, Mr. H.S. Panwar was charged with causing death of 59 persons and injury to 100 persons, who were watching the movie in the cinema hall, on account of fire and the toxic gases through his act and omission in issuing the *'No Objection Certificate'* without ensuring the provisions for fire safety and means of escape in the cinema hall, enabling renewal of cinema hall in contravention of the Acts and Rules, which were negligence not amounting to culpable homicide and thereby having committed offences punishable under Sections 304A read with Section 36 IPC. He was also charged with committing offences punishable under Sections 337/338 IPC. Mr. Surender Dutt, who was charged along with Mr. H.S. Panwar, died during the pendency of the proceeding. As discussed in the preceding portions relating to structural deviations, installation of transformer and inspections, there were several building deviations noticed by the licensing authority as well as the Fire Department. The earliest deviation noticed was in 1983 (Ex.17/B), which included offices in the top floor. They were again noticed in 1994 and in the official inspection before the fire, i.e. 06.05.1996 (Ex. PW-16/E). These reports consistently said that from the fire safety angle, the obstructions in the top floor were hazardous.

12.2 It has been also discussed that on 09.04.1996, an inspection was carried out; the report was exhibited as Ex.PW-32/A. A *'No Objection Certificate'* (Ex.PW-32/B) was issued on 18.04.1996 by Mr. H.S. Panwar. A letter (Ex.PW-37/AL) was sent on 20.09.1996 to the Chief Fire Officer by the DCP (Licensing) requiring an inspection report. This letter stated that the requisite report from the fire office had not been received by the licensing office.

12.3 Further to the licensing authorities request, an inspection was carried out on 18.11.1996; the report is PW-33/C. It listed deficiencies which included fire extinguishers requiring refilling; sprinkler system in the basement not operating; storage of wooden planks in the basement under warning that they should be removed; direction to provide fire safety measures in the visitor's lounge on each floor, Director office and guest room on the ground floor parking and directed that footlights in the balcony should be provided. The '*No Objection Certificate'* was withheld on the ground that the matter would be re-considered only after removal of listed deficiencies and shortcomings. By a letter dated 28.11.1996, the Ansals informed fire office that shortcomings had been cured. A re-inspection was carried out on 22.11.1996. Thereafter, a *'No Objection Certificate'* (Ex.33/B) was sent on 24.11.1997 to the DCP (Licensing). The re-inspection report stated that fire-fighting arrangements by the cinema management were seen and some of the fire extinguishers and some hoses were operated and found satisfactory. Barring this, the '*No Objection Certificate'* did not mention that all the other deficiencies mentioned in the previous objections dated 08.11.1996 (Ex.33/C) had been cured or rectified. There was no mention of the provision of footlights in

the balcony or their proper functioning; no mention of sprinkler system in the basement and that fire safety measures had been provided in the visitor's lounge in each floor.

12.4 The next document is fire inspection note and report of May 1997. The inspection report/proforma (Ex.31/DD), according to PW-32, Mr. Ashok Kumar, P.A. to Mr. H.S. Panwar, was filled by him. That report recorded that the various equipments and sections of the cinema hall were in order from the fire safety angle and latter recommended grant of *'No Objection Certificate'*.

12.5 The evidence of Mr. Surender Singh (PW-31), Fire Man, is crucial. PW-31 proved Occurrence Book maintained between 06.05.1997 and 11.06.1997. He identified Ex.PW-31/A-1, the entry showing departure of Mr. H.S. Panwar for the purpose of inspection. He stated that the last line was in his writing and that he wrote at the instance of the SDO, who had called him at his house in June 1997. The words, *"Saath mein SDO"* was added in June. That entry showed departure at 10.20 am on 12.05.1997. He also proved entry (Ex.PW-31/B) which was added later at the instance of SDO, Mr. Surender Dutt.

12.6 The prosecution sought to prove that on 22.12.1996, the date when Mr. H.S. Panwar had inspected and given approval for issuance of No Objection Certificate, he was on leave. This was sought to be done by placing on record an extract of his Leave Register (Ex. PW-88/J). The said Leave Register was seized during the course of investigation through Ex.PW-88/G. Dy. Chief Fire Officer (PW-88), who deposed in support of it submitted that the Leave Register was maintained in the normal course of official duties and related to personnel from

the rank of Station Officer to Deputy Chief Fire Officer. He identified Ex.PW-88/J and his signature on it. He also deposed that according to the record, Mr. H.S. Panwar was on leave on 22.12.1996 which was also sanctioned by the Chief Fire Officer. In the cross-examination on behalf of Mr. H.S. Panwar what was sought to be put to him was that an officer of Fire Department is on duty for 24 hours and is available in case of need. The witnesses also deposed in cross-examination that all equipments are not checked during inspection of buildings.

12.7 This Court has recorded earlier that the inspection reports were issued mechanically; Ex. 33/D explicitly granted *'no objection'* even mentioning that there was no objection from the fire safety and means of escape point of view, entirely inconsistent with the mandate of the gangway rules under Delhi Cinematograph Rules, 1953 and 1981. The last inspection report dated 12.05.1997 does not show any application of mind to the cinema hall's compliance with gangway rules, exit rules or other norms concerning fire safety. None of the inspection reports on the record assessed the impact of transformers and the possibility of two transformers in the balcony area and possibility of fire hazard in the event of an accident. The inspection reports (Ex.33/D and 31/DB dated 24.12.1996 and 12.05.1997) crucially are entirely silent about the concerns expressed in the previous letter on 18.11.1996 (Ex.33/C). Having recorded that fire sprinklers were unavailable in the balcony area and that the fire extinguishers in the cinema hall were filled-up, the least that could have been done by Mr. H.S. Panwar and the others inspecting the cinema was to indicate whether all these concerns

had been fully addressed to their satisfaction in accordance with the rules. The mandate of Section 12 of Cinematograph Act, 1952 and the further obligation of the Chief Fire Officer under Section 6 of the 1986 Act read with Rule 5 is to be satisfied that the building housing the cinema is completely safe from any hazard connected with fire.

12.8 In the course of argument, Mr. H.S. Panwar had contended that the working of the Public Address Systems, exit gates and other lights in the balcony were not under his control as that was the domain of the cinema management. This Court had found that the certificate of 'no objection' letters issued on 24.12.1996 and 12.05.1997 as well as the inspection reports made no record of satisfaction that such electrical appliance had been tested and found in working order.

12.9 The acts of Mr. H.S. Panwar, who had been inspecting the cinema hall right from 1994, show a completely negligent and rash attitude towards his duties. Without delving into too deep whether he inspected the hall on 22.12.1996 and assuming contention to be so and in view of his explanation in response to queries under Section 313 of Cr.PC, nevertheless what cannot be overlooked is that the 'No Objection Certificate' completely glossed over the fire hazard, so glaringly evident due to the second DVB transformer in the balcony area as well as the exit and the gangways in the balcony which were in clear violation of the norms. The fact that accused 1 & 2 were licensees or there were others acting as Managers of the cinema hall did not in any manner undermine Mr. H.S. Panwar's basic duty to record satisfaction on the basis of the prescribed norms of fire safety. Building Bye law K.8.4 mandated that a

sprinkler had to be provided, in the area which housed transformers. In the report Ex. PW-32/D mentioned about a sprinkler which was deficient. That sprinkler was in the ground floor. There was no sprinkler seized after the event, although 22 fire extinguishers were seized.

12.10 PW-85 mentioned that he was not trained to operate any fire safety equipment. H.S. Panwar, in none of his reports, mentioned any details – a prescribed from was filled. The report Ex. PW-64/D shows that a few extinguishers, sent for testing, were not in working order.

12.11 The appellant, Mr. H.S. Panwar, as a responsible officer could reasonably be expected to foresee that any laxity in the enforcement of fire safety norms and mechanical issuance of *'No Objection Certificate'* would result in the licensing authority proceeding ahead and issuing permits under the Cinematograph Act. The role of the fire department under Delhi Cinematograph Rules, 1953 as well as the 1986 Act and Rules was, therefore, crucial. The importance of compliance with these norms was fully within the awareness of Mr. H.S. Panwar who, on 18.11.1996, refused to issue '*No Objection Certificate'* listing out some deficiencies. That in fact, held up the issuance of permit. He, more than the other statutory authorities had to be absolutely satisfied that no fire safety norms were complied and that all risks foreseeable under rules and otherwise reasonably foreseeable from a reasonable man's perspective were not present. Yet, he completely omitted to adhere to all norms and in a routine manner issued *'No Objection Certificate*'. Had he not done so and had diligently

listed deficiencies, including the fire hazard from the transformers and the fire hazard from the exit point of view as well as tested the appliances in the cinema hall, the *'no objection'* could not have been granted. This action has significance and to an important degree contributed to the tragedy whereby 59 patrons lost their lives and 100 others sustained serious and grave injuries due to smoke exposure. In these circumstances, the Court is of opinion that the materials on record justify his conviction for the offences punishable under Sections 304A as well as 337/338 read with section 36 IPC.

XIII. FINDINGS-S.S. SHARMA & N.C. TIWARI

13.1 The Trial Court findings against Mr. S.S. Sharma and Mr. N.D. Tiwari are premised on their issuing No Objection Certificates for 1995-96 and 1996-97 respectively. It was also found that they handed over the certificates directly to Mr. K.L. Malhotra of the Uphaar Cinema. It was held that the No Objection Certificates were issued mechanically, to benefit the Uphaar Cinema and were not preceded by any inspection.

13.2 The cinema licenses had to be preceded by inspection of various authorities. DCR, 1953 mandated by Rule 12 states inspection of the cinema hall premises to access structural and fire safety as a condition for grant of license. Rule 14 of DCR, 1981 prescribed for inspections of the cinema premises by the electrical inspector, Executive Engineer and the Chief Fire Officer.

13.3 The expression *'Executive Engineer'* was defined in DCR, 1953, to mean, by Rule 2 (*viii*) as follows:

"…….in relation to licensing of any place for cinema exhibitions means the officer holding charge of the Delhi State division of the Central Public Works Department or such other officer as may be appointed by the Chief Commissioner to perform the duty of the Executive Engineer under these rules;"

13.4 Rule 2 (*ix*) of the DCR, 1981 was cast in identical or *parimetiria* terms – it is thus clear that in terms of the legal obligation to conduct the inspection, the concerned Executive Engineer of the Central Public Works Department had to inspect the premises. The evidence of PW-2 on records, in the form of deposition clearly shows that only the Executive Engineers and the Zonal Engineers (of MCD) were competent to issue 'No Objection Certificate'. It is also a matter of record that the appellants, Mr. S.S. Sharma and Mr. N.D. Tiwari used to deal with trade licenses. He had deposed that inspection was done only when a new license was issued and that till the second license was issued annually, there was no inspection. PW-65 deposed that the DCP (Licensing) used to routinely issue two month license or permits on account of the said order of the High Court without receipt of technical reports. It has further come on the record that the protocol for coordinating various authorities's work was sought to be worked out through a statutory notification dated 03.05.1997; PW-39, the Executive Engineer deposed on this aspect. PW -22 deposed without challenge that the trade department (where the accused Tiwari and Sharma were working) used to look after licensing of cinema premises for storage of films.

13.5 In this case, the two No Objection Certificates pertain to the periods 01.04.1995 - 31.05.1995 and September 1996 – 31.03.1996. Apart from commenting that the accused Mr.

S.S. Sharma and Mr. N.D. Tiwari acted casually or carelessly without ensuring any inspection prior to issuance of No Objection Certificate, the prosecution had not substantiated what were their duties. On the other hand, both provisions of DCR, 1953 (Rule 12) and DCR, 1981 (Rule 14) point to a duty, if at all, on the part of the Executive Engineer, as a technical expert to assess the structural soundness of the cinema hall premises, certify it and ensure that it complies with all norms. The curious practice of the designated official, i.e. the Executive Engineer/Zonal Engineer, who in this case was PW-39 – "marking" the letter for no objection to officers not authorized to inspect the premises and not empowered to issue the certificates, was not even examined, much less explained. The charge-sheet had mentioned about a notification dated 03.05.1994 changing the procedure and the MCD Building Department, having to inspect the premises annually instead of the PWD. The trial court also found it to be so. However, no such notification was produced during the trial; on the other hand, PW-39 spoke to having seen it when his statement was recorded by the CBI. Rule 14, DCR 1981 talks of inspection by Executive Engineer, defined as such official from CPWD. If the position were indeed different, it is not clear how these accused could have been charged; the duty was clearly that of the Executive Engineer.

13.6 The prosecution, in order to succeed in its charge of accused Mr. S.S. Sharma and Mr. N.D. Tiwari having acted with criminal negligence and caused death and serious injury, should have first established the duty of care either through some enacted law like DCR, 1953 or DCR, 1981 or a general duty discernable in their normal course of official functions.

In addition, the prosecution should have established breach of such duty would have resulted in a foreseeable damage and death to or in grievous injury to several persons. Unlike in the case of the Fire Department, the Licensing Department or the Electrical Inspectorate, all of whom are named authorities empowered to inspect the premises, there is no role assigned to Administrative Officers of the MCD. The rationale for obtaining 'no objections' from these officers has been left unexplained. The prosecution has failed to establish the necessity for such No Objection Certificate and how without such document, by the Administrative Officers of MCD, the licensing authority, DCP (Licensing) would not have issued the temporary permit. Ex. 22/A, the letter by the licensing department is in fact addressed to the Building department, MCD.

13.7 The materials on record point to the fact that in Mr. S.S. Sharma's case, the No Objection Certificate at best led to a temporary license for two months, which expired in 1995. In Mr. N.C. Tiwari's case, the license expired in March 1997. The prosecution has not shown as to whether the subsisting license as on 13.06.1997 was based on a No Objection Certificate issued by either of these accused. The prosecution has also not been able to establish whether any competent MCD officer of the level of Executive Engineer inspected the premises at any point of time. PW-65, ACP deposed about the licensing procedure and stated that DCP licensing "depended" on technical reports were given by the concerned department of MCD or NDMC. Crucially, he said that the department had been issuing temporary license because of stay order of the High Court, and "non receipt" of technical

reports. This establishes that the obligation to issue the no objection was of the technical expert in the MCD – a fact clearly known to the licensing department and that the licensing department issued the permits, routinely without expert reports. It has been established by the evidence adduced that in 1996, the licensing department had sought for reports from various agencies, including the MCD. A three member team had inspected the premises on 30.04.1996 and submitted its report (Ex. PW-17/D). According to PW-17, the members of this team were engineers; the report was marked to the Executive Engineer, PW-39, by Ex.PW-17/E. This shows that the duty of inspecting premises, according to practice, was of the Engineering staff; they had to furnish the technical report.

13.8 The materials on record nowhere disclose how, even if it were assumed that Mr. S.S. Sharma and Mr. N.D. Tiwari breached their duties of care, the breach was of such magnitude as would have inevitably led to death or grievous injury to several persons and that such consequence was reasonably foreseeable by them when they issued No Objection Certificates. No doubt, the issuance of No Objection Certificates and handing them over to the beneficiary directly was a careless, even callous act. It was also used to be placed on the record as a prelude to the issuance of the permits. But in the absence of clearly discernable duty of care and the magnitude of foreseeable damage by these accused, this Court cannot affirm the findings of the Trial Court and their conviction.

13.9 The appeals of Mr. S.S. Sharma and Mr. N.D. Tiwari are, therefore, entitled to succeed.

XIV CRIMINAL APPEAL NOS. 21, 33 AND 56 OF 2008: B.M.SATIJA, BIR SINGH AND A.K. GERA

14.1 Earlier in this judgment, the Court had after appreciating the conspectus of materials on the record upheld the findings of the Trial Court that the cause of the fire was faulty repair of the transformer, and violation of the prescribed norms and regulations whereby blue phase cable was improperly crimped to its socket. The finding that this improper crimping ultimately led to its detachment to the bus bar, its de-coiling effect and its falling upon the transformer fin, leading to a slit, as a result of intense sparking/arching was upheld. The resultant lighting up of transformer fire and its spread into the parking area, further aggravates into a dense toxic smoke which spread up through a chimney effect and resulted in chocking of several patrons in the balcony, death of 59 persons and grievous injury to 100 others has been upheld. The Trial Court convicted appellants B.M. Sateeja, Bir Singh and A.K. Gera under Section 304 IPC read with Section 36 IPC and sentence them to undergo imprisonment for 7 years with a fine of Rs.5000/- each and a default sentence of 6 months each.

14.2 The evidence on record establishes that: -

(1) In the morning of 13.6.1997 around 7:00 AM, a fire was reported in the Uphaar DVB transformer. Information was received by PW-41; PW-47 Munna Lal was deputed. The entry PW-41/A in the no current complaint register corroborated this; PW-42

C.J. Singh also deposed about this. PW-46 deposed having switched off the HT Panel and reported the matter to its office.

(2) PW-40, Assistant Inspector at the R.K. Puram Sub-Station received information and chocked out program with the appellant B.M. Sateeja.

(3) PW-44 Bhagwandin, a daily wager carried the tool box. He deposed about the presence of B.M. Satija, Bir Singh and A.K. Gera. He also corroborated that the replacement of the sockets and cable crimping was done with the aid of dye and hammer. The entire operation was over in 45 minutes.

(4) PW-24 and PW-64 in their respective reports PW-24/A and PW-64/B clearly stated about improper crimping and the defect in the manner of repairs conducted on the 'B' phase cable while joining the socket. PW/64 and PW/35 deposed that intense sparking of the kind which happened could lead to slit of the transformer. PW-35 further deposed that such rupture due to melting as a result of arching can take place within few seconds.

(5) The inspection of the transformer which was conducted on 22.1.1997 showed that protection relays which were so crucial to precisely guard against the contingencies of the type which occurred on 13.6.1997 were missing – they are mentioned in PW-40/DA-1

(6) The evidence of senior officials such as PW-48, PW-67 and PW-73 of the DVB showed that crimping was the proper method of joining the cable. The evidence also established that crimping machines were available at the sub-station.

14.3 S.K. Behl, PW-48, the DVB Additional Chief Engineer deposed that Assistant Electrical Fitters/Senior Fitters actually carried out the maintenance and the immediate officer for getting such work done are Junior Engineer/Inspectors who are responsible in 100 % check of the sub-station. His evidence also points to accused B.M. Satija being the Inspector of the concerned zone 1601, where the repairs were to be carried out upon the DVB transformer. This is also spoken to by PW-43 V.K. Gupta who was the Inspector posted at the Green Park Complaint Centre. He stated that in case of any problem with the 1000 KVA transformer, it was to be dealt with by the R.K. Puram sub-station department.

14.4 It is clear from the conclusions and preceding discussion that Uphaar Cinema transformer for maintenances purposes fell in Zone 1601; it was to be inspected on periodic basis by the concerned Electrical Inspector which in this case was B.M. Satija. After receiving the complaint, the DVB office deputed staff for emergency purposes, who switched off the transformer. Later a discussion was held in the office of PW-40 and the planning for attending complaints of various zones including that of Uphaar Cinema was made. The evidence also established that B.M. Satija, Bir Singh and A.K. Gera went together; it also shows that A.K. Gera did not belong to the Zone 1601 but was posted to zone 1603. It has also been held that since January, 1997 there were no protection relays on the transformer. PW-64/D also mentioned 5 other deficieinces in the transformer. Apart from the evidence of experts PW-24, PW-35, PW-64 and PW-26 A.K. Agarwal also concurred with the view about the manner of start of fire due to improper crimping and the resulting detachment of the cable

from the bus-bar, melting of the socket, the cable settling down on the transformer fin leading to a slit on it and the transformer oil which gushed out catching fire. PW-25 in his cross examination categorically rejected the alternative theory sought to be suggested that the fire emanated from the parking area and not from the transformer area.

14.5 In view of these established facts, the Court has to now consider as to whether the improper crimping and the resultant detachment of the cable and socket leading to the fire and ultimately the smoke was such an inevitable consequence as to have been within the knowledge of the appellants B.M. Satija, Bir Singh and A.K. Gera. No doubt when the repairs were carried out those entrusted with the responsibility of doing so were reasonably expected to be aware that any let up or fault on their part would be extremely dangerous. Two transformers were located side by side; they were also within the parking area of the ground floor of the building. However, one cannot be unmindful of the fact that the transformer did function for about 4 hours seemingly without any problem. The problem occurred almost by 4.55 PM when the power was restored after shut down. The conduct of those carrying out these repairs no doubt shows callousness, rashness, and negligence. Yet it does not show knowledge which would pre-suppose a higher degree of awareness in the conscious state of mind. In order to succeed the prosecution has to establish beyond reasonable doubt that the accused knew that in a normal course of events, the consequences of their actions would be death of the patrons or grievous injury likely to cause death.

14.6 In ***Shamsher Khan's case*** (2001 Crl. Law Journal 119), the accused were alleged to have manufactured and stored bombs. An explosion occurred causing death of 3 persons and injury to others. Even while affirming that the prosecution had established about the involvement of the appellant in the manufacturing of bombs in his house, the Court nevertheless set aside the conviction under Section 304 & 308 IPC. The Court held that to prove commission of offences punishable under Section 304 Part-II, the prosecution should beyond reasonable doubt attribute knowledge to the accused that death of any person was a likely consequence of his action.

14.7 Section 304-II covers cases which fall within the 3rd part of Section 299 which defines culpable homicide not amounting to murder. In this context it has been held that knowledge as used in the later part of Section 299 (defines the offence and Section 304 Part-II) as a term that imports certainty and not merely probability. As held in ***Faquira v. State*** (AIR 1955 All.321), knowledge as contrasted with intention, properly signifies a state of conscious awareness of certain facts in which the mind itself remains supine or inactive. Knowledge may be also contrasted with intention which signifies and even more positive awareness coupled with the desire that the consequence should ensue. ***Russel on Crime (12th Edition)*** states that term 'intention' used in criminal law denotes the mental attitude of the man who has resolved to brining about certain results if he can possibly do so.

14.8 It may be useful to analyze certain decisions to discern as to what precisely would be "knowledge" in the context of a given set of circumstances. Thus in ***S.D. Sons v. State of***

Gujarat (AIR 1991 SC 917), in ***Madhusudan Satpathi v. State of Orissa*** (AIR (1994) SC 474) the medical evidence showed that single injury proved fatal and other injuries were simple although the weapons used were not deadly, the Court inferred that the accused only had knowledge that their acts were likely to cause death and did not intend to do so, thus convicting them under Section 304 Part-II.

14.9 Similar findings were recorded in cases where single blows on the head were administrated upon the victim by the accused in the judgment reported as ***Chamru Budhwa v. State of Madhya Pradesh*** (AIR (1954) SC 652). In ***Willie (William) Slaney v. State of Madhya Pradesh*** (AIR (1956) SC 116) a solitary blow with the hockey stick was given on the head of the victim by the accused, in the course of a sudden quarrel and heated arguments. The accused was convicted under Section 304 Part-II.

14.10 All the authorities consistently emphasize that the prosecution must prove beyond reasonable doubt that the accused had the requisite mental awareness and consciousness about the inevitability of consequences of his actions. In this case what has been proved is that the repairs were conducted improperly and contrary to law. While there can be no doubt that an extremely high degree of care is necessary for carrying out such repairs, it cannot inevitably follow that the accused had knowledge that their departure from such degree of care, and their improper repairing of the transformer would have inevitably led to the consequences of death. In these circumstances, it is held that the conviction of the accused for the offences under Section 304 cannot be sustained.

14.11 The above finding does not, however, end the matter. Like in the earlier part of this judgment dealing with the Manmohan Uniyal's appeal, the Court should examine whether the facts proved establish a minor offence, though these accused may not have been charged for it, and whether they were made aware about such facts, during the trial.

14.12 So far as role of the accused B.M. Satija and Bir Singh are concerned, PW-40 P.C. Bhardwaj deposed having informed B.M. Satija about the morning complaint. PW-44 deposed that all 3, i.e., Gera, Satija and Bir Singh were instrumental in repairing of the DVB transformer at Uphaar in the morning of 13.6.1997. Expert evidence in the form of PW-35/A; Ex.PW36/A all established that the cause of fire was improper crimping of the cable end with the socket which ultimately detached at the crucial time, resulted in intense sparking, settling down of the cable on the transformer which resulted in a slit; transformer oil gushed out, caught fire and spread to the parking area resulting in the improperly parked vehicles catching fire.

14.13 Objections were taken to Ex.PW-40/A, compliance report said to have been signed by all the three. The photocopy of that compliance report is spoken to by PW-40, yet the Court cannot ignore the fact that Satija's signatures on this could not be established by the prosecution. This document is, therefore, of no use to establish the presence of one or the other employee.

14.14 The depositions of other witnesses assume importance. PW-40 clearly mentioned that he had discussed the complaint with Satija and chalked out the programme. PW/44 clearly

deposed having accompanied Satija, Bir Singh and Gera to the relevant site at Uphar and witnessing the repairs with the aid of dye and hammer. At one place, he mentioned that Bir Singh carried out the repair under the supervision of both the officers, in another place of his deposition, he mentioned that Bir Singh's work was supervised by Satija.

14.15 The evidence of PW-73 and PW 48 establish the role of various officials at the Inspector/J.E. level. PW-40 also spoke about such responsibility and stated that he had to inspect the transformer at least once a year, whereas the Inspector had to do it each month. The entry in the general diary register Ex.40/C for the complaint reveals that the three accused had carried out the repairs to the DVB transformer in the Uphar Cinema. The other evidence relied upon by the Trial Court to conclude the involvement of all the officials is PW-108/AA, a separate compliance report said to have been written by Gera. P.L. Bhardwaj, PW-40 also spoke that whenever there was a break down, duties were not assigned according to Zone.

14.16 As stated earlier Ex.PW-40/A, cannot be relied upon for more reasons than one, it is, firstly a photocopy, the signatures appearing on it could not be established by the hand writing expert PW-92. His report PW-92/B stated as much. So far as the other evidence is concerned, what emerges is that B.M. Satija was the Inspector Incharge of the maintenance of the Uphar DVB transformer. According to PW-40, he had a duty to inspect it every month. PW-40 also spoke about chalking out the programme for attending the Uphar Cinema complaint with B.M. Satija. The evidence of PW-48 and 73 further establish that zone-wise

distribution of the work was the norm followed by the DVB at the relevant time. Ex.PW-67/DA, a list, listing the officials who worked in the R.K. Puram sub-station between 1989 and September, 1997 does not contain Gera's name as belonging to that sub-station. There is also evidence on record that Gera was assigned Zone 1603.

14.17 PW-44 mentions that repairs were carried out through crimping by Bir Singh. Although he does mention Gera's name initially, later he stated that Bir Singh was supervised only by B.M. Satija. It is also a matter of record that the authorities in DVB had recommended reinstatement of Gera through PW-48/A. Although some arguments was sought to be made on behalf of Satija that comments of Bhardwaj was sought for at the relevant time when he was suspended official, no illegality can be deduced from that score. The evidence has also established that according to the relevant ISI standards, cables were to be crimped or joined together with the aid of crimping machine. Expert evidence as to the cause of fire has unanimously pointed to the improper crimping with the aid of the crimping machine as the cause for the fire which occurred after 4.55 PM in the transformer room.

14.18 This Court has while discussing the law of negligence and causations dwelt upon eventualities where causation may contain more than one significant factor. In such circumstances, unless the Court is convinced that one among the many factors, which may form part of a single indivisible transaction, broke the chain of causation, the problem would be viewed from a common sense perspective without segmenting the incident and viewing each factor independently. Therefore, the fact that deaths occurred somewhere else and not

in the parking lot, cannot take away the scrutiny of the accused' role by the Court. The accused B.M. Satija and Bir Singh were proved to be responsible for the **proper** maintenance and repairs of the DVB transformer in the Uphar Cinema building. Satija as the Inspector was Incharge of that transformer and was also under to inspect it each month. PW-44 is unambiguous about the role of Satija and Bir Singh. PW-48 and 73 also corroborate this as far as the role of Satija is concerned in the improper crimping. Being experienced employees and officials, with reasonable skill and competence, the duty of care cast upon them was to ensure that repairs were of high standard having regard to the nature of the equipment. Although nothing has been disclosed on the record about the awareness of these accused regarding the 1989 fire outbreak, yet in the ordinary course, the said two accused could not have over looked certain important facts such as: -

1. Two transformers existing side by side.

2. Absence of essential safety mechanisms to control the fire in the transformer room.

3. Location of the transformer being in a parking lot where in a normal course of affairs several vehicles would be expected to be parked.

4. Any fire incident in the transformer or the transformer room in such circumstances would in all probability develop or magnify into greater proportions causing grave danger to the life and public health.

5. At any given point of time during the day, the hundreds of people would be visiting inside the building maximizing the potential for fire to cause damage resulting in high degree of possibility of loss of human life or danger to public health.

6. Protection relays were missing in the transformer, enhancing the danger of a fire since the possibility of tripping immediately upon a fault stood eliminated.

If one applies the test of reasonable skills and experience, mandated by the law of negligence, to be possessed by professionals (the term extending to DVB Inspectors, as well since these set of accused had vast experience of attending to transformer complaints), i.e., that in a situation involving the use of special skill or competence, what is to be seen to determine negligence is not the common reasonable man's skill but the standard an ordinary skilled man exercising or professing to have that special skill (Ref. *Jacob Mathew* (supra). On an application of that test, the only conclusion which this Court can draw is that in such cases the accused can successfully absolve himself by showing that he had acted in accordance with the general and approved practice. Here the said accused were unable to point to such factors. On the other hand their conduct showed a complete and careless disregard to the dangers that were imminent as a consequence of their negligent acts. As experienced men with reasonable standards of expertise, they could have foreseen that the most probable consequence of their acts and omissions would have been a fire within the transformer room

that had the potential of destroying human life and imperlling public health. They could have as prudent man prevented it by exercising due care and not switching on the transformer but reporting that the cable ends sockets could be replaced only after crimping with the aid of a crimping machine.

14.19 So far as the arguments about immunity to the accused on account of Section 56 of the Electricity Act is concerned, it may be noticed that that provision enacts that no suit, prosecution or other proceedings can be maintained against any public officer or any servant of a local authority for anything done or on good faith purporting to be done under the Act.

14.20 In this case, the sanction for prosecution of the DVB employees has been placed on record. Although Parliamentary intention was to confer immunity from prosecution and civil action against public officers acting under the Act, that provision in the opinion of the Court cannot have blanket application. The basis for such immunity is undoubtedly the good faith action of an employee. So long as the employee discloses that the acts complained of were performed by him in due course of employment and in good faith, he cannot be prosecuted. Section 52 negatively defines good faith as follows: -

> "Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

The facts found disclose that the acts of Satija and Bir Singh cannot be termed as done or believed to be done with due care or attention. All evidence points to the contrary. The mere

fact that they did the act in furtherance of their duties is insufficient, therefore, for them to claim immunity under Section 56.

14.21 In view of the above, this Court is of opinion that though the evidence on record does not establish that Satija and Bir Singh were guilty of the offence under Section 304 Part-II IPC, it establishes beyond reasonable doubt that they were guilty of criminal negligence and are punishable under Section 304-A read with 337, 338 & 36 IPC.

14.22 As far as the appeal of A.K. Gera is concerned, this Court is of the opinion that prosecution was unable to establish its case. The two circumstances put against him were the evidence of PW-44 Bhagwandeen, an entry in the general diary register made by him and evidence of PW-40 that there is no assignment of duties in break down situations. On the other hand, the evidence of higher officials such as PW-48 and PW-73 is clear that Gera never worked in the R.K. Puram sub-station; his name did not figure in the maintenance of the Uphar Cinema DVB transformer. The evidence also points to a discussion between PW-40, who was overall Incharge of the maintenance of the transformer, and accused Satija who chalked out the programme for attending complaints. It also establishes that there was another complaint in Zone-1603 which had to be attended to. The evidence further points the A.K. Gera being assigned Zone-1603. In the reply to queries put under Section 313, Gera mentioned that Zone-1603 contained 120 transformers and that only in emergencies could anyone be assigned any duty but otherwise zone-wise allocations were followed for attending the routine complaints. Speaking about the entry made by the Gera in the general diary

register, PW-40 admitted that such entry could be made by anyone. DW-3 R.C. Upadhyaya spoke about the general diary register and the material at site register. This was Ex.100/D. These clearly pointed to Gera not being assigned the duties or responsibility for maintenance of Uphar Cinema DVB transformer. Undoubtedly Bhagwandin PW-44 mentions at one place that Gera was present when the transformer was repaired and he along with Satija supervised Bir Singh but in the subsequent part of his deposition in the general examination he mentions that B.M. Satija supervised Bir Singh and makes no reference to the role of A.K. Gera. Importantly Gera who was under suspension after the incident for some time was reinstated after a full departmental review as to his role.

14.23 On an overall conspectus of the above facts, this Court is of opinion that though Gera's presence at site stands established, in the absence of fuller evidence about the role played by him, there can be no presumption that he played any part in the defective repairs, carried out without the aid of the crimping machine on the Uphar DVB transformer. Mere presence when that cannot lead to presumption of involvement of an actor who is not expected to play any role and is insufficient, in the opinion of the Court, to saddle criminal liability of the kind envisioned under Section 304-A. To establish that Gera had a duty of care to ensure that notwithstanding the defective crimping carried out by the employees competent to do so and that he had an overriding responsibility of objecting to the work done by them, without proving whether he was there during the entire operation and if so how the extent of his involvement, the conviction for causing death due to criminal negligence cannot

be arrived at. Although, there are circumstances which point to Gera's presence, they may even amount to suspicion of the role played by him, yet such evidence proved are insufficient to prove the case against him beyond reasonable doubt. In the circumstances, neither can be he convicted under Section 304 Part-II, nor under Section 304-A read with 337/338 and 36 IPC.

14.24 His conviction has to, therefore, be set aside.

XV CRIMINAL REVISION NO. 17 OF 2008: ASSOCIATION OF VICTIMS OF THE UPAHAAR TRAGEDY

15.1 This revision, under Section 397 of the Code of Criminal Procedure, seeks intervention of the court, to alter the conviction of Respondent Nos. 2-6, i.e Sushil Ansal, Gopal Ansal, H.S. Panwar, S.S. Sharma and N.D. Tiwari. The revision was heard together with appeals of the respondents, against the conviction recorded by the District and Sessions Judge. The first part of this judgment has dealt with their appeal. By this part, the revision is proposed to be dealt with and disposed of.

15.2 The revisionists, who are victims or relatives of victims of the Upahaar fire incident, which claimed the lives of 59 and grievously injured 100 others, contend that the trial court erred gravely in returning a conviction under Section 304-A IPC, read with Section 337/338 read with Section 36, IPC against the respondent accused. They urge that the evidence on record establishes that the respondent accused were guilty of Section 304, Part II IPC, since

they had knowledge that their acts and omissions would inevitably lead to the deaths and grievous injury of several people.

15.3 Shri. K.T.S. Tulsi, learned Senior Counsel for the revisionists urged that although the trial court had framed charges against the respondents under Section 304-A IPC, read with Section 337/338 read with Section 36, IPC, yet the court, upon noticing that the evidence on record pointed to commission of offences of a more serious magnitude, should have exercised its powers and framed fresh charges, and, after proceeding to hear the accused, convicted them under Section 304, Part II, IPC, on the strength of the available evidence. Reliance was placed on Section 216 of the Criminal Procedure Code. The said provision reads as follows:

> *"216 COURT MAY ALTER CHARGE.*
>
> *(1) Any Court may alter or add to any charge at any time before judgment is pronounced.*
>
> *(2) Every such alteration or addition shall be read and explained to the accused.*
>
> *(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.*
>
> *(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.*

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

15.4 It was argued that the evidence on record overwhelmingly established that the first two accused were in charge of the day to day affairs of the company, which ostensibly owned the cinema hall. Though they cleverly manipulated the records, showing that they had resigned from the company, as directors, and also manipulated the shareholding pattern, yet the fact remained that not a single of the 5000 shares of the company was owned by any outsider. The cinema license continued in the name of the first accused, Sushil Ansal. Both he and Gopal Ansal were engaged in the crucial decisions regarding running of the cinema hall. They also had unlimited power to bind the company financially as well as encumber its assets, to its detriment, even as on the day of the incidents. The materials produced by the prosecution also conclusively established that these two accused had on many occasions withdrawn large sums of money from the company's accounts. Crucial decisions, like location and installation of the second, DVB transformer, the parking contract, letting out of the building at once converting it into a commercial complex, and also hindering movement in the top floor, besides causing obstructions in the lower floors, and most importantly, the placement of additional seats on the one hand, and compromising all important norms relating to fire safety, contrary to DCR 1981, were taken at the behest of the said Accused. They were also aware that an identical accident occurred in 1989; the morning fire on 13th

June, 1997, should also have served as a warning. Yet, they proceeded to allow screening in the cinema hall, which led to the catastrophe. They also did not ensure that fire safety measures were taken, and no management personnel was present in the balcony to assist patrons, attempting to flee the scene, and escape the after effects of the smoke, which was choking them. These clearly were pointers to their knowledge about the most likely or probable consequence of their actions, i.e deaths and grievous hurt to several patrons, thus making them liable for the offence under Section 304 Part II, IPC. Counsel relied on several documents to bring home the point.

15.5 It was urged that the role of the Respondent Nos. 4 to 6 shows their complete disregard to the prescribed norms, which mandated that no objections could be issued by them, after proper inspection of the cinema premises. H.S. Panwar, it was urged, did not even visit the cinema premises, in December 1996 and was on leave on the relevant date. Besides, his inspection reports, recommending approval for license, were mechanical, and issued at the behest of the cinema management, which wanted the renewals without any delay. The accused did not test the apparatus, whenever he visited the premises; he knew that that arrangement and re-arrangement of seats in the balcony inevitably, coupled with completely inadequate fire safety measures, would have resulted in deaths of several patrons and injury to others. Similar arguments were made in regard to the role of S.S. Sharma and N.D. Tiwari, who had without even ensuring any inspection of the building or premises, recommended issue of no objection certificate to the cinema management.

15.6 Learned counsel relied on the judgment reported as *Willie (William) Slaney v. State of M.P.*,(1955) 2 SCR 1140, where it was held that:

> *"Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction. Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done, what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. If all these elements are there and no prejudice is shown, the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one.*
>
> ***44.*** *In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; but if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature of the charge, or a total want of one, was taken at an early stage."*

15.6 It was argued that the trail court did not take any notice of the application moved by the revisionists, and that this has led to the accused getting convicted for minor offences. Learned counsel submitted that under these circumstances, this court should remedy the situation, and if satisfied that the accused were guilty *prima facie* of graver offences, exercise its revisional jurisdiction to cure the injustice, and see that perpetrators of serious offences do not flee justice.

15.7 The revision was opposed on behalf of the respondents, who urged that the petition under Section 397 cannot be maintained, after the trial had concluded. It was argued that the charges against each of the respondent accused had been framed over seven years ago. The revisionists were also aggrieved by that. Some of the accused were aggrieved by the charges framed by the trial court; these revisions Crl. R. No. 238 with Crl. R. 175 and Crl. M. 339, Crl. R. 270 of 2001, were dismissed on September 11, 2001 (*Sushil Ansal –vs- State* 2002-(108)-CRLJ -1369 –DEL). Counsel relied on Section 222 of the Code of Criminal Procedure, which is in the following terms:

> *"222 WHEN OFFENCE PROVED INCLUDED IN OFFENCE CHARGED.*
>
> *(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.*
>
> *(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence. although he is not charged with it.*
>
> *(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.*
>
> *(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.*
>
> ***Illustrations***
>
> *(a) A is charged, under section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a*

carrier. It appears, that he did commit criminal breach of trust under section 406 of that code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406.

(b) A is charged under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that code."

15.8 It was urged that having regard to the above provision, it cannot be contended that an accused can be convicted for an offence graver in character than what he was charged with. Learned counsel submitted that *Slaney's case* is an authority for the proposition that if an accused is not charged with Section 34, though ingredients of that offence are made out, he can yet be convicted.

15.9 It would be useful, before discussing the merits of the revision, to notice the extracts from the order of this court, dismissing the revision against order on charges. The court held that:

"In Crl. R. 238/2001 filed on behalf of petitioner-Sh. Sushil Ansal former Managing Director of M/s. Green Park Theatres Associated Private Limited, which had built and established Uphaar Cinema, the prayer is to discharge him of the charges framed against him by the trial Court under Ss. 304-A, 337, 338 read with S. 36 of Indian Penal Code and S. 14 of Cinematograph Act, 1952. In Crl. R. 175/2001 also filed by Sh. N. S. Chopra, Manager of Uphaar Cinema, the prayer is for discharge. He has been charged by the trial Court under S. 304 read with S. 36, I.P.C. Crl. R. 270/2001 has been filed by Association of Victims of Uphaar tragedy with a prayer to charge Sh. Sushil Ansal and Sh. Gopal Ansal under S. 304, I.P.C. also in addition to the charges already framed against them.

I have heard Sh. Ram Jethmalani, Senior Advocate on behalf of petitioner-Sh. Sushil Ansal, Sh. R. K. Naseem, Advocate for petitioner-Sh. N. S. Chopra and Sh. K. T. S. Tulsi, Senior Advocate on behalf of the Association of Victims. Sh. Harish Salve, Solicitor General of India has made submissions on behalf of the State represented through Central Bureau of Investigation.

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In the result, all the three revision petitions are held to be without any merit and are dismissed. The intering orders dated 22-5-2001 stand vacated.

Nothing stated herein shall be taken as an expression of opinion on the merits of the case pending before the trial Court as the observations made herein are on prima facie basis and tentative only."

15.10 In a recent decision, *Sukhram v. State of Maharashtra,*(2007) 7 SCC 502, the Supreme Court had to consider what was a "minor" offence in relation to something an accused was charged with. The court held:

"We find that though charge for offence punishable under Section 302 IPC had been framed against appellant A-1, no such charge was framed against appellant A-2, even with the aid of Section 34 IPC. The only charge framed against A-2 was for an offence punishable under Section 201 read with Section 34 IPC. True that Section 222 CrPC clothes the court with the power to convict a person of an offence which is minor in comparison to the one for which he is charged and tried, but by no stretch of imagination, offences under Sections 304-B and 498-A IPC, under which appellant A-2 was convicted by the trial court, could be said to be minor offences in relation to that under Section 201 IPC, for which he was charged. In fact, the three offences are distinct and belong to different categories. The ingredients of the offences under the said sections are vastly different. Therefore, Section 222 CrPC had no application on facts in hand."

15.11 Similarly, earlier, in *Shamnsaheb M. Multtani v. State of Karnataka,* (2001) 2 SCC 577 the Supreme Court held that:

"We often hear about "failure of justice" and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment[3]). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.

24. One of the cardinal principles of natural justice is that no man should be condemned without being heard, (audi alteram partem). But the law reports are replete with instances of courts hesitating to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice.

xxxx xxxx xxxx

31. Now take the case of an accused who was called upon to defend only a charge under Section 302 IPC. The burden of proof never shifts onto him. It ever remains on the prosecution which has to prove the charge beyond all reasonable doubt. The said traditional legal concept remains unchanged even now. In such a case the accused can wait till the prosecution evidence is over and then to show that the prosecution has failed to make out the said offence against him. No compulsory presumption would go to the assistance of the prosecution in such a situation. If that be so, when an accused has no notice of the offence under Section 304-B IPC, as he was defending a charge under Section 302 IPC alone, would it not lead to a grave miscarriage of justice when he is alternatively convicted under Section 304-B IPC and sentenced to the serious punishment prescribed thereunder, which mandates a minimum sentence of imprisonment for seven years.

32. The serious consequence which may ensue to the accused in such a situation can be limned through an illustration: If a bride was murdered within seven years of her marriage and there was evidence to show that either on the previous day or a couple of days earlier she was subjected to harassment by her husband with demand for dowry, such husband would be guilty of the offence on the language of Section 304-B IPC read with Section

113-B of the Evidence Act. But if the murder of his wife was actually committed either by a dacoit or by a militant in a terrorist act the husband can lead evidence to show that he had no hand in her death at all. If he succeeds in discharging the burden of proof he is not liable to be convicted under Section 304-B IPC. But if the husband is charged only under Section 302 IPC he has no burden to prove that his wife was murdered like that as he can have his traditional defence that the prosecution has failed to prove the charge of murder against him and claim an order of acquittal.

33. The above illustration would amplify the gravity of the consequence befalling an accused if he was only asked to defend a charge under Section 302 IPC and was alternatively convicted under Section 304-B IPC without any notice to him, because he is deprived of the opportunity to disprove the burden cast on him by law.

34. In such a situation, if the trial court finds that the prosecution has failed to make out the case under Section 302 IPC, but the offence under  *Section 304-B IPC has been made out, the court has to call upon the accused to enter on his defence in respect of the said offence. Without affording such an opportunity to the accused, a conviction under Section 304-B IPC would lead to real and serious miscarriage of justice. Even if no such count was included in the charge, when the court affords him an opportunity to discharge his burden by putting him to notice regarding the prima facie view of the court that he is liable to be convicted under Section 304-B IPC, unless he succeeds in disproving the presumption, it is possible for the court to enter upon a conviction of the said offence in the event of his failure to disprove the presumption."*

15.12 The above discussion would reveal that the revisionists were aggrieved by the charges framed against these respondents; according to them, they should have been charged for graver offences. Their revisions were rejected. That order became final; the revisionists did not carry the matter further to the Supreme Court. The accused went to trial, on these charges. The trial court convicted, and sentenced them to prison terms. Their appeals were heard, and have been disposed of in this common judgment. In such a situation, the court is of opinion

that unless convincing facts plainly and unequivocally establish that there was misjoinder of charges, and the facts proved point to commission of a graver offence, interference should not be ordered. The procedure, in cases of mis-joinder spelt out in Section 216, applies during the stage of trial; here what the revisionist is seeking is a direction to remand the matter for fresh charges under Section 304 Part II, which goes against the scheme of the Code. The revisionists were unable to point out any instance, recorded in the authorities, where the course being suggested by them was adopted.

15.13 Besides the above consideration, the court is of opinion that the structure and scheme of the code, indicated by provisions like Section 222 is such that accused can be convicted without charge for "minor" offence, necessarily minor in relation to what they are charged with. Such statutory provision also indicates Parliamentary thinking that if charges for an offence are not proved, but the prosecution proves facts which establish another offence, the accused can be convicted in the absence of a charge only if the latter offence, he is not charged with, is "minor". Here, the revisionists take the untenable position that the accused respondents, though charged with the offences under Sections 304-A, 337/338 and 36, punishable up to a maximum of two years imprisonment, should be convicted of Section 304 Part II, which is punishable with imprisonment that can extend to seven years. Plainly, the argument is unreasonable.

15.14 The court, after a careful examination of the materials, and the submissions urged, is of opinion that revisional interference of the kind sought for in this petition, is not warranted. The Revision Petition is therefore, rejected.

XVI CONCLUSION AND SENTENCE

16.1 Before proceeding with the conclusions, the Court has to voice its disquiet in the manner the case was prosecuted. The evidence gathered and placed before the Court showed that there were glaring lapses in the licensing department, the MCD, the DVB and the Electrical Inspectors office. Accused after accused argued that several senior level officials in these departments were either kept out of the orbit of investigation, or were deliberately not sent up as accused. These concerns were held to be justified by the trial court, which directed the CBI to investigate into the role of such persons. Though more than a year has elapsed, nothing seems to have happened. On the other, hand the CBI chose to array, as accused for the charge under section 304 Part-II persons against whom there was no material to substantiate knowledge. Thus, R.K. Sharma, N.C. Chopra, A.K. Gera, S.S. Sharma and N.D. Tiwari were made to face such charges; the trial court even convicted them. The discussion concerning their appeals has shown how those charges, and convictions under section 304 Part II IPC, were untenable. Many of them are to be acquitted completely. One such accused appellant, A.K. Chaudhary, died in jail, before the judgment could be pronounced. The horrific nature of the tragedy, understandable anguish of survivors and relatives, and their determination to see that the law is enforced, cannot be lost sight of. Yet, that should not

obscure the Court's duty to ensure that accused are convicted on the basis of proof beyond reasonable doubt, the only standard ordained by law, and equally applicable to all citizens.

16.2 So far as directions given by the trial court, are concerned, having regard to the above observations, the CBI shall complete the task in a time bound manner, and report its conclusions, in accordance with law, to the trial Court, on or before 15.03.2009.

16.3 Now, the issue of sentence. It is acknowledged that sentencing is a complex task, beset with many inexactitudes. The Law Commission's 47th Report, commenting on what would be an appropriate sentence, says that proper sentence is a composite of many factors, including the nature of the offence, the circumstances (extenuating or aggravating) of the offence, the prior criminal record, if any, of the offender, the age of the offender, the professional and social record of the offender, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender. It also includes, the prospect for the rehabilitation of the offender, the possibility of a return of the offender to normal life in the community, the possibility of treatment or of training of the offender, the possibility that the sentence may serve as a deterrent to crime by this offender, or by others, and the present community need, if any, for such a deterrent in respect to the particular type of offence involved.

16.4 All the convicted appellants, have been convicted under Section 304-A read with Sections 337/338 and 36 IPC; Accused Nos 1 & 2 have, in addition been convicted of the offence under Section 14, Cinematograph Act. The court proposes to take up the case of each set of appellants. Before that, it would be useful to notice the trend indicated by reported judgments of the Supreme Court, in this regard. In *Rustam Irani's case* (supra), which involved 11 deaths, the sentence for conviction under Section 304-A upheld was 18months; In *Bhalchandra,* which again involved 11 deaths, the court awarded 6 months. Recently, in *Rathnashalvan v. State of Karnataka*,(2007) 3 SCC 474 which was a motor accident, case, resulting in three deaths, the sentence upheld was 6 months under Section 337.

16.5 This court has to keep in mind the unique nature of this case, which not only involved a large number of deaths and injuries, but exposed how safety norms were given a go-bye by all the accused, such as the first two accused, as well as the employees of the statutory authorities. The duty of care, as perceived by this Court, upon all those involved in the management of establishments (be they private or public) involving several processes, such as electricity supply, transport, malls, cinema houses, multiplexes, airports, railway stations, bus terminals and commercial complexes housing several offices, is being aware not only of dangers and potential risks which are immediately in their gaze, but also to factor in the potential danger from equipment and actions which, though not under their control, are integrally part of or associated with these premises. Rapid means of escape may be

necessitated due to several factors, only one of which is fire. Recent developments have only highlighted that. This case has shown how complete disregard to this duty – more in the nature of a trust, towards those who visit such premises, and are often unaware of the precise exit points in cases of emergencies, has resulted in a disaster. The statutory authorities too correspondingly showed utter disregard for their duties.

16.6 The role of the first two accused, as discussed in detail was that the series of decisions taken by them led to breach of several mandatory norms, which blocked easy exit from the balcony. This court has rejected their contention that they were not responsible. As leaders of the enterprise, they were under a full time duty to ensure the viewers' safety at all times. The mitigating factors, urged on their behalf are that they are both of advanced age with no previous criminal record and that they are educated, respectable members of the society.

16.7 Having regard to all the factors, the court is of opinion that so far as Appellants in Cr. Appeal No. 794/2007 (Sushil Ansal) and Cr. Appeal No. 846/2007 (Gopal Ansal) are concerned, imposition of the maximum sentence is not justified. Ends of justice would be served if the sentence is modified to rigorous imprisonment for a period of one year and fine Rs.5000/- under section 304-A. They are sentenced to rigorous imprisonment for three months under section 337 of IPC. They are further sentenced to rigorous imprisonment for a period of one year under section 338 of the IPC and a fine of Rs. 1000/- each for the offence

under section 14 of the Cinematograph Act, 1952. These sentences shall run concurrently, and they will be entitled to set off the period of detention under section 428 of the CrPC. The default sentence is modified to simple imprisonment for two months in the case of section 304-A and section 338, and in the case section 14 of the Cinematograph Act, 1952 it shall be one-month simple imprisonment. Their conviction, recorded by the trial court, is accordingly maintained. Cr. Appeal Nos 794/2007 and Cr. Appeal No. 846/2007 are therefore, partly allowed to the extent of the above modification.

16.8 As regards Cr. A. 66/2008 concerning accused Manmohan Uniyal, the negligent and rash behavior shown by him has been a held to be a significant and direct cause of the accident. His presence at the balcony during the crucial time, could have prevented valuable loss of life. He could have, as an employee aware about the topography in the building, guided the patrons to safety, and facilitated their rapid escape. His acts maximized the potential damage. In his case, the absence from his assigned duties, most certainly resulted in greater loss of life and injuries to more patrons. This court has considered all factors, and convicted him under Sections 304-A, 337 and 338 IPC, read with Section 36. Having regard to all the conspectus of facts, this court sentences this appellant to undergo rigorous imprisonment for a term of 2 years, for the offence under Section 304-A, along with fine of Rs. 2000; rigorous imprisonment for six months, with fine of Rs. 500/- for the offence under Section 337, IPC and rigorous imprisonment for one year, with fine of Rs. 1000/-, for the

offence under Section 338, IPC. In default of payment of fine for any of the sentences, he shall undergo simple imprisonment for four months. The sentence shall run concurrently, and the appellant shall also be entitled to set off the period of detention, under Section 428 Cr. PC.

16.9 As regards Cr. A. 4/2008 concerning accused H.S. Panwar, the negligent and careless inspection carried out by him has been a held to be a significant and direct cause of the accident, which took away lives of innocent people, and grievously injured several others. His vigil could have prevented the fire clearance certificate. If he had displayed the same zeal that he did in November, 1996, when the inspection report did not yield a "no objection" there would have been a greater scrutiny of the fire safety norms. Instead, he certified that fire safety norms had been complied with, whereas in actuality they were not. No doubt, he has served the Delhi Fire Service for a long time; according to the trial court judgment, he was 68 years when the impugned judgment was pronounced. He is also a recipient of commendations. On a conspectus of all these circumstances, the court is of the opinion that ends of justice would be served if the sentence is reduced to rigorous imprisonment for one year and Rs. 5000/- under section 304-A. the default sentence in his case is also modified to simple imprisonment for two months. The conviction by the trial court is therefore maintained, and to the above extent. Cr. Appeal No. 4/2008 is partly allowed to this extent.

16.10 The appellants in Crl Appeal Nos. 21/2008 (B.M. Satija) and 23/2008 (Bir Singh) have been convicted of the lesser offence under Sections 304-A, read with Sections 337/338 and 36 IPC, for rash and negligent acts, endangering human life, and public safety, and causing grievous hurt. Their rash acts caused the fire. As concluded earlier, being professionally experienced and responsible, the standard of foresight attributable to them is higher; they should have been reasonably aware of the risk factors existing that day in the form of two transformers, one of which was unauthorized, both being in the parking area, the lack of protection relays, etc. Yet, they went ahead, and carried out defective repairs without the aid of standard equipments. Having regard to all the conspectus of facts, this court sentences these appellants to undergo rigorous imprisonment for a term of 2 years, and a fine of Rs. 5000/- each, for the offence under Section 304-A, rigorous imprisonment for six months with fine of Rs. 500/- for the offence under Section 337, IPC and rigorous imprisonment for one year, with fine of Rs. 1000/-, for the offence under Section 338, IPC. In default of payment of fine for any of the sentences, they shall undergo simple imprisonment for four months. The sentence shall run concurrently, and the appellants shall also be entitled to set off the period of detention, under Section 428 Cr. PC.

16.11 For the reasons mentioned in the previous part of the judgment, the appeals of R. K. Sharma, N.C. Chopra, S.S. Sharma, N.D. Tiwari and A.K. Gera, are allowed; they are acquitted. They shall be forthwith released.

16.12 In view of the fact that the main appeals have been disposed, all applications seeking interim relief have been rendered infructuous and the same are accordingly disposed of.

DECEMBER 19, 2008 **(S.RAVINDRA BHAT)**

VD/AJK/MB **JUDGE**