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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.08.2021

PRONOUNCED ON: 26.08.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No. 14769 of 2016

And

Crl.M.P.Nos. 7373 & 7374 of 2016

Bathrinathan

... Petitioner/Accused

Vs.

The State of Tamil Nadu

Represented by

Inspector of Police

E-1, Mylapore Police Station (Law & Order),

Chennai - 600 004.

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No. 5196 of 2015 pending on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, quash all further proceedings as against the petitioner.

For Petitioner : Mr. G.R.Hari

For Respondent : Mr. E.Raj Thilak
Government Advocate

ORDER

This Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No. 5196 of 2015 pending on the file of the 18th Metropolitan Magistrate Court at Saidapet at Chennai and to quash all further proceedings as against the petitioner/A-1 is concerned. The petitioner was the owner of a old house of about 850 sq.ft., built up area, at No.10/55, Muthu Street, Mylapore, Chennai - 600 004. He wanted to demolish the house. He engaged a Contractor / A2, who was in the business of demolishing old buildings. A2 is said to have engaged A3, the owner of a JCB vehicle for demolishing the house. A4 was the driver of the JCB vehicle. He also engaged A5 lorry driver of a tipper lorry to clears the debris from the premises. The Maistry, who was



examined as witness No.4, had engaged employees including Murugan for clearing the debris.

2. On 30.11.2014 late night at around 11.30 p.m., when admittedly the petitioner was also present at the spot and the JCB was engaged in demolishing the building and Murugan was engaged in clearing the debris, a wall fell down on Murugan, who was hurt and was taken to Government Royapettah Hospital and was declared as brought dead. Thereafter, FIR in Crime No. 2940 of 2014 had been registered in E-1, Mylapore Police station under Section 304-A IPC and after investigation, final report was filed before the XVIII Metropolitan Magistrate, Saidapet in Chennai and was taken cognizance as C.C.No. 5196 of 2015. Seeking to quash the calendar case in so far as he is concerned, A1, the owner of the building had filed the present Original Petition.

3. Heard arguments advanced by Mr. G.R.Hari, learned counsel for the petitioner/A1 and Mr. E.Raj Thilak, learned Government Advocate (Crl.Side) appearing for the respondent.

4. The main contention of Mr. G.R.Hari, learned counsel was that the petitioner/A1 was only the owner of the building. He had engaged A2 as Contractor to demolish the building. A2 had, in turn engaged A3 owner of JCB vehicle for demolishing the building. A-4 was the driver of the JCB vehicle. He had also engaged A5 lorry driver for the tipper lorry to be used for clearing debris. The deceased Murugan was one of the employees, who was clearing the debris when the wall fell down on him and he died as a result. The only issue stressed by Mr.G.R. Hari is that the offence under Section 304-A IPC can not be attracted in so far as the petitioner/A1 is concerned as the ingredients as stipulated under Section 304-A IPC particularly causa causans that resulted in the death was not due to any direct act on the part of the petitioner/A1.

5. In this context, the learned counsel straight away relied on the Judgments of the Hon'ble Supreme Court and of learned Single Judges of this Court and therefore urged that this Court should interfere with further proceedings of C.C.No. 1596 of 2015.

6. The learned counsel first relied on 1965 AIR SC 1616 [Kurban Hussein Mohammedali Vs. State of Maharashtra]. That was a case where the appellant was the manager and working partner of a firm which manufactured paints and varnish. The factory did not have license for manufacturing wet paints, but still manufactured them. Four burners were used in the factory. During the process, froth overflowed from a barrel and because of the heat, varnish and turpentine which had been stored at a



short distance caught fire as a result of which seven workmen died.

7. The appellant had been prosecuted and convicted under Section 304A and 285 IPC. His appeal before the High Court had been dismissed. He then preferred a further appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court, while acquitting him for offence under Section 304A IPC held as follows:-

"The main contention of the appellant is that he was not present when the fire broke out resulting in the death of seven workmen by burning and it cannot therefore be said that he caused the death of these seven persons by doing any rash or negligent act. The view taken by the Magistrate on the other hand which appears to have been accepted by the High Court was that as the appellant allowed the manufacture of wet paints in the same room where varnish and turpentine were stored and the fire resulted because of the proximity of the burners to the stored varnish and turpentine, he must be held responsible for the death of the seven workmen who were burnt in the fire. We are -however of opinion that this view of the Magistrate is not correct. The 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 result of the rash or negligent act. It appears that the direct or proximate cause of the fire which resulted in seven deaths was the act of Hatim. It seems to us clear that Hatim was apparently in a hurry and therefore he did not perhaps allow the rosin to cool down sufficiently and poured turpentine too quickly. The evidence of the expert is that the process of adding turpentine to melted rosin is a hazardous process and the proportion of froth would depend upon the quantity of turpentine



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added. The expert also stated that if turpentine is not slowly added to bitumen and rosin before it is cooled down to a certain temperature, such fire is likely to break out. It seems therefore that as turpentine was being added at about closing time, Hatim was not as careful as he should have been and probably did not wait sufficiently for bitumen or rosin to cool down and added turpentine too quickly. The expert has stated that bitumen or rosin melts at 300 degree F and if turpentine is added at that temperature, it will catch fire. The flash point of turpentine varies from 76 to 110 degree F. Therefore the cooling must be brought down, according to the expert, to below 76 degree F to avoid fire. In any case even if that is not done, turpentine has to be added slowly so that there may not be too much frothing. Clearly therefore the fire broke out because bitumen or rosin was not allowed to cool down sufficiently and turpentine was added too quickly in view of the fact that the process was performed at closing time. It is clearly the negligence of Hatim which was the direct or proximate cause of the fire breaking out, though the fact that burners were kept in the same room in which turpentine, and vamish were stored was indirectly responsible for the fire breaking out and spreading so quickly. Even so in order that a person may be guilty under s. 304-A, the rash or negligent act should be the direct or proximate cause of the death. In the present case it was Hatim's act which was the direct and proximate cause of the fire breaking out with the consequence that seven persons were burnt to death; the act of the appellant in allowing turpentine and varnish being stored at a short distance was only an indirect factor in the breaking out of fire..."

8. An analysis of the above Judgment would show that evidence pointed out that the appellant was not physically present when the accident or the incident of fire took place. He came there as soon as the information about it reached him. Further, it had been observed that the cause of the fire was not the presence of the burners in the room in which the varnish and turpentine were stored. It was found on evidence that the direct or proximate cause of the fire which resulted in seven deaths was the act of another accused Hatim, who did not allow the rosin to cool down sufficiently and poured turpentine too



quickly. During the course of trial as is seen from the above extract, an expert was also examined, who also gave an opinion that fire is likely to break out if turpentine is not solely added to bitumen and rosin before it is cooled down to a certain temperature. It was held on evidence that the negligence of Hatim was the direct or proximate cause of the fire breaking out. It was further held that the act of the appellant in allowing turpentine and varnish being stored at a short distance was only an indirect factor in the breaking out of a fire.

9. The facts in the present case are certainly distinguishable.

10. In the first place, the petitioner herein was physically present at 11.30 in the night when the accident occurred. This has been spoken to by a witness in his statement. This statement has to be tested during cross examination. That can taken place only when trial is permitted to be conducted. Further as the owner of the building and as a person present at the spot, who had engaged, either directly or indirectly all the other accused, the petitioner herein was the only person with authority to direct the manner in which the demolition is to be conducted. The wall collapsed as a result of such demolition. The petitioner will necessarily have to explain the circumstances leading to the collapse of the wall.

11. The learned counsel for the petitioner then relied on 2012 (2) MLJ (Crl.) 585, S.Varadhan Vs. State, represented by the Sub-Inspector, Thiruvallur.

12. A learned Single Judge of this Court had relied on Kurban Hussein Mohammedali's case referred supra. The facts in this case were that A1 was driving a lorry loaded with iron powder from Gummidipoondi to Chennai. A2 to A4, officials of the Commercial Tax Department stopped the lorry. In view of the sudden stopping of the lorry, a TATA Sumo car which was following the lorry collided with the lorry resulting in the death of four occupants in the car. On a complaint given, a charge sheet was laid against A1 to A4 for commission of offence under Sections 279, 338 (6 counts) and 304-A IPC (4 counts). A2 to A4/Officials of the Commercial Tax Department filed a petition under Section 482 Cr.P.C., to quash the proceedings. The learned Single Judge had held as follows:-

"14. Section 279 IPC speaks about rash driving or riding on a public highway and, admittedly, the petitioners herein did not drive any vehicle in a rash and negligent manner. Section 338 IPC speaks about causing grievous hurt by act endangering life or personal safety



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or others and Section 304-A IPC speaks about causing death by negligence. To constitute either the offence under Section 279 or 304-A IPC, proof of rash and negligence is essential and the result on account of rash or negligence, which included the injury or death must be the direct result of such act of the accused and it must be proximate and efficient cause without intervention of other's negligence.

15. Admittedly, the petitioners herein, in pursuant to the direction of their superior official were discharging their duties and since they were specifically directed to check the vehicles with regard to evasion of commercial tax, they halted the lorry bearing Regn. No. TSI 8600 and it was halted and the TATA Sumo car, which was closely following the said lorry, dashed against the said lorry on the rear side and as a result of which some of the occupants died and some of them sustained grievous injuries. The acts of A-2 to A-4, even as per the version of the prosecution, cannot be said to be rash and negligent and assuming that it was rash and negligent act, cannot be said that it was proximate and efficient cause of the death of the occupants of the TATA Sumo car.

16. A perusal of the statement of witnesses would also indicate that 9 persons were traveling in the ill-fated TATA Sumo car bearing Regn. No. TN-04-E-4318 and the lorry bearing Regn. No/TSI 8600 was driven fast and the TATA Sumo car was following it and suddenly brakes were applied due to which the TATA Sumo car dashed on the rear side of the lorry. Even the materials available on record, relied on by the prosecution in the form of statement of witnesses and sketch, do not disclose that the petitioners were aware of the car coming behind the lorry. Therefore, it cannot be said that their act of halting the vehicle is the proximate., and efficient cause for the death/injury to the occupants of the car."

13. The learned Judge had observed as a fact held that the petitioners did not drive any vehicle. He also found that the petitioners were discharging their duties and had been directed to stop vehicles with regard to evasion of commercial tax. They halted the lorry. The TATA Sumo car which was nearly following



the lorry dashed on the lorry on the rear side. It was held by the learned Single Judge that the act of A2 to A4 cannot be said to be rash and negligence and cannot be said to be proximate cause of the death of the occupants, the TATA Sumo car. It was also found that the materials did not disclose that the petitioners were aware of the car coming behind the lorry.

14. Again the facts in the present case are different. The death of Murugan was the result of a wall collapsing on him. The wall was being demolished by a JCB hired by the Contractor who in turn was hired by the petitioner. The petitioner was also present at the spot. Therefore, the possibility of danger of the wall collapsing on the workmen was direct and on facts, the said Judgment is distinguishable.

15. The learned counsel for the petitioner then relied on a Judgment reported in 2010 (1) MLJ (Cr1.) 1064 [Geetha Ramesh and Ors. Vs. Sub-Inspector of Police]. In that case, the third petitioner was an Advocate of this Court. The first petitioner was his wife and the second petitioner was his son. The first and second petitioners had purchased a property in Nilgiris District. They wanted to construct a house. They engaged A1/Contractor for the construction work. A1 engaged A2 as labourer sub Contractor for doing earth work to construct a wall. At that time, the earth caved in. One of the women worker died and there were injuries to six other workers. Pursuant to a complaint, Crime No. 109 of 2008 was registered for offences punishable under Sections 337 and 304-A IPC. The learned Single Judge while examining the application to quash the proceedings held, again relying on Kurban Hussein Mohammedali's case referred supra, that the petitioners cannot be prosecuted for the offences punishable under Sections 304-A and 337 I.P.C for the death of one of the workers and injuries caused to six of the workers engaged by the contractor (A1) and labour sub-contractor (A2) since the excavation work was not done in the presence of any one of the petitioners or under the supervision of or in accordance with the specific directions issued by the petitioners regarding the dimensions and the manner in which excavation work is to be done. The petitioners had made clear averments that the entire construction work was entrusted to the contractor (A1) and the excavation work for construction of retaining wall was undertaken by the contractor himself, engaging the labour sub-contractor. It was admitted that the petitioners were residing in Chennai which is more than 500 k.m away from Udagamandalam. Therefore, it was quite obvious that they could not have directly supervised the work. Further more, there was no legally admissible evidence collected by the Investigating officer to show that the work was done under their supervision and that there was rashness and negligence on the part of any one of the petitioners which resulted in the



accident without there being intervention of negligence of any other person.

16. In the instant case as repeatedly pointed out, the petitioner was actually present at the site when the accident occurred. He was present when the demolition work was undertaken. The facts again are distinguishable.

17. The learned counsel for the petitioner then relied on a Judgment reported in 2015-1-L.W. (Crl.) 70 [ATB Bose Vs. State by Inspector of Police and another]. In that case, the petitioner, who had filed an application under Section 482 Cr.P.C., to quash further proceedings in C.C.No. 6260 of 2006 on the file of XIII Metropolitan Magistrate, Egmore, Chennai, was a member of a Trust known as "Avvai Kalai Kazhagam". The Trust had a swimming pool where training was offered for children between the age group of 5 and 15. The defacto complainant's son, aged 6 years had been admitted to learn swimming. The defacto complainant received a call that his son had been admitted in hospital in an unconscious state. He found that his son had died of drowning. The witness during the course of investigation stated that the deceased, was standing by the side of the swimming pool and accidentally slipped into the swimming pool. This was not noticed by anyone. Somebody then jumped into water and rescued the boy. He was given first aid but died on the way to the hospital.

18. The learned Single Judge once again examined the facts and found that the petitioner therein /A2 could not be charged with offence under Section 304-A IPC. It was held that allowing the deceased to go near the swimming pool without a life jacket was not the direct or proximate cause for the death of the deceased. The learned Single Judge concurred with the statement of the Senior counsel on behalf of the petitioner that the act of the petitioner cannot be even a remote cause for the death of the deceased.

19. In such circumstances, the learned Single Judge had allowed the application and quashed the proceedings.

20. To repeat the facts again are different. The petitioner as repeatedly pointed out was physically present. He had engaged the contractor and was present when the accident occurred.

21. I must express an opinion that the reliance of the learned counsel for the petitioner on Judgments without adhering to fundamental principles as laid down in the provision would not advance the case of the petitioner.



22. In this case, the petitioner was physically present at the time when the accident took place. In the case cited supra ATB Bose Vs. State by Inspector of Police and another as a fact, a witness had spoken that the deceased boy was standing near the swimming pool and had accidentally slipped into the swimming pool. The act of negligence charged against the petitioner therein was that he permitted the boy to go near the swimming pool without a life jacket. That charge was found to be remote by the learned Single Judge. The facts are certainly distinguishable.

23. The learned counsel for the petitioner then relied on an unreported Judgment in CrI.O.P.No. 2801 of 2019 of a learned Single Judge of this Court dated 26.02.2021 [L.Ashok Kumar Vs. State, represented by Inspector of Police, Pallapatty Police Station, Salem District]. In that case, again, the petitioner had filed an application to quash the proceedings in C.C.No. 317 of 2018 on the file of the learned Judicial Magistrate Court No.II, Salem. The petitioner was the owner of a Mill, who had engaged men to remove sand, garbage etc., inside the premises. A JCB machine was clearing the debris and dumping the garbage outside the compound wall. This was removed through a tipper lorry, which was driven by the deceased. The lorry came into live contact with a High tension electric wire, as a result of which, the driver was electrocuted and died on the spot. An FIR was registered under Section 304(A) IPC.

24. The learned Judge came to a conclusion that the lorry had come in contact with the live, High Tension wire and the petitioner cannot be held to be the causa causans. Therefore, he had thought it fit to quash the calendar case.

25. It must however be pointed out that the lorry was clearing the debris outside the compound wall. In the instant case, the accident took place at the very spot where the petitioner was standing. It took place at 11.30 in the night. Quite apart from the statement of the witness that the petitioner was present, there is yet another statement that there was poor lighting. These two statements will necessarily have to be further tested during the course of trial. The petitioner will naturally have every opportunity to test these two statements. But his presence alone is sufficient to hold that he should face the trial and the proceedings cannot be quashed.

26. The learned counsel for the petitioner then relied on a Judgement of a learned Single Judge of this Court dated 27.07.2020 in CrI.O.P.Nos. 121 & 1950 of 2020 [C.Muthuramalingam Vs. State represented by Inspector of Police, B-5, Harbour Police Station, Chennai and others]. In those petitions which had both



been filed to quash charges under Section 304-A, 279 and 337 IPC read with 34 IPC, the facts were that the petitioners were employees of Chennai Port Trust. Four persons were sleeping in the JD Shed III at Chennai Port Trust. The first accused was the driver of the tipper lorry. When he was reversing the lorry, he ran over the four persons and three persons died. An FIR was registered. The petitioners, who sought to quash the proceedings were working as Section Superintendent, Shed Master, Assistant Traffic Manager and Harbour Safety Officer. It was found as a fact by the learned Single Judge that they were on duty at Chennai Port Trust but had nothing to do with the crime committed by the first accused, namely, driver of the lorry. In those circumstances, the learned Single Judge had thought it fit to quash the proceedings.

27. Once again as repeatedly pointed out that the facts are distinguishable from the facts of this case where the petitioner was physically present when the accident took place.

28. In the Judgments reported in 2015-1-LW (Crl.) 70 [ATB Bose Vs. State, represented by Inspector of Police] or in Crl.O.P.Nos. 121 & 1950 of 2020 [C.Muthuramalingam Vs. State represented by Inspector of Police, B-5, Harbour Police Station, Chennai and others] dated 27.07.2020 or in Crl.O.P.No. 2801 of 2019, dated 26.02.2021 [L.Ashok Kumar Vs. State, represented by Inspector of Police, Pallapatty Police Station, Salem District], the learned Single Judges of this Court were probably not made aware of the Judgment of the Hon'ble Supreme Court reported in 2014 6 SCC 173 [Sushil Ansal Vs. State through CBI]. The Hon'ble Supreme Court had occasion to examine the phrases *causa causans* and *Causa Sine Qua Non* for the death of a victim under Section 304-A IPC. The Judgment started with the following paragraph:-

"Enforcement of laws is as important as their enactment, especially where such laws deal with safety and security of citizens and create continuing obligations that call for constant vigil by those entrusted with their administration. Callous indifference and apathy, extraneous influence or considerations and the cynical "Chalta Hai" attitude more often than not costs the society dearly in man-made tragedies whether in the form of fire incidents, collapse of buildings and bridges, poisonous gas leaks or the like. Short-lived media attention followed by investigations that at times leave the end result flawed and a long winding criminal trial in which the witnesses predecease their depositions or switch sides under pressure



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or for gain and where even the victims or their families lose interest brings the sad saga to an uncertain end. A somewhat similar story is presented in these appeals by special leave arising out of a common judgment and order dated 19th December, 2008 passed by a Single Judge of High Court of Delhi whereby a batch of criminal appeals filed by those convicted by the trial Court for commission of different offences and the sentences awarded to them were disposed of alongwith criminal revision petition no.17 of 2008 filed by the Association of Victims of Uphaar Tragedy (hereinafter, "AVUT") that led to the death of 59 persons besides injuries to nearly 100 others. "

29. The facts of that case in brief are that a theatre auditorium Uphaar Cinema was in the first floor of the cinema complex. A balcony was constructed in the second floor. The ground floor comprised of a parking lot and a room used for placing two electric transformers maintained by Delhi Vidyut Board. The bigger of the two transformers caught fire on 13.06.1997 at 6.55 a.m. It was brought under control by the Officials of Delhi Vidyut Board. Repairs were also carried out. It was recharged for resumption of electric supply by 11.30 a.m.

30. The prosecution case was that the repair was unsatisfactory and resulted in loose connections. This created a hole in the radiator. Through this hole, the transformer oil starting leaking out. Heat was generated and this ignited the oil at 4.55 p.m. The fire spread to the parking lot where cars were parked. The result was that the cars went ablaze. The smoke gushed into the stairwell and into the cinema auditorium through a door and through the air conditioning ducts. Further, smoke travelled through another staircase and into the lower portion of the balcony of the auditorium. At this time, a large number of persons were in the auditorium enjoying the matinee show of 'Border', a popular Hindi movie. Because of the smoke and carbon monoxide, people started suffocating. The shift incharge received a telephonic message from the Deputy General Manager of Uphaar Cinema. It was only then was the transformer switched off and the flow of energy to the cinema complex stopped. This was at 5.05 p.m. However, inside the auditorium the people rushed towards the exit in darkness as there was no emergency lights or cinema staff to help or guide them. There was no public announcement. The project operator was not given instructions to stop the film. The doors of the middle entrance of the balcony were found to be bolted by the gatekeeper, who left his duty without handing over charge to his reliever. Since an additional of 52 extra seats had been placed, another



exit was also closed. A1 and A2 were the owner of the cinema hall. They knew about these deviations. It was found that these obstructions, deviations, violations and deficiencies resulted in the victims keeping trapped for 10 to 15 minutes leading to the death of 50 persons.

31. In that case, the charge of Section 304-A IPC against A1 and A2 was discussed in detail. It must be kept in mind that A1 and A2 were the owners and were not present during the time of incident. They only knew about the deviations that had been made. In the cases cited by the learned counsel, the charges were quashed because the accused in were not present but the Hon'ble Supreme Court had taken a totally different view in a similar circumstance. Therefore, I have no hesitation to hold that the orders relied on by the learned counsel for the petitioner in so far as delivered by the learned Single Judges can be stated to apply only to the facts of those particular cases.

32. The Hon'ble Supreme court while examining Section 304-A IPC held as follows:-

"(ii) "Rash" or "negligent" – Meaning of

56. Section 304-A IPC makes any act causing death by a rash or negligent act not amounting to culpable homicide, punishable with imprisonment of either description for a term which may extend to two years or with fine or with both. It reads:

"304-A. 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.

57. The terms "rash" or "negligent" appearing in Section 304-A extracted above have not been defined in the Code. Judicial pronouncements have all the same given a meaning which has been long accepted as the true purport of the two expressions appearing in the provisions. One of the earliest of these pronouncements was in *Empress of India v. Idu Beg* [*Empress of India v. Idu Beg*, ILR (1881) 3 All 776] , where Straight, J. explained that in the case of a rash act, the criminality lies in running the risk of doing an act with



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recklessness or indifference as to consequences. A similar meaning was given to the term "rash" by the High Court of Madras in *Nidamarti Nagabhushanam*, *In re* [Nidamarti Nagabhushanam, *In re*, (1871-74) 7 Mad HCR 119], where the Court held that culpable rashness meant acting with the consciousness that a mischievous and illegal consequence may follow, but hoping that it will not. Culpability in the case of rashness arises out of the person concerned acting despite the consciousness. These meanings given to the expression "rash", have broadly met the approval of this Court also as is evident from a conspectus of decisions delivered from time to time, to which we shall presently advert. But before we do so, we may refer to the following passage from *A Textbook of Jurisprudence* by George Whitecross Paton reliance whereupon was placed by Mr Jethmalani in support of his submission. Rashness according to Paton means: "where the actor foresees possible consequences, but foolishly thinks they will not occur as a result of his act".

(emphasis supplied)

58. In the case of "negligence" the courts have favoured a meaning which implies a 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 which having regard to all the circumstances out of which the charge arises, it may be the imperative duty of the accused to have adopted. Negligence has been understood to be 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 person would not do. Unlike rashness, where the imputability arises from acting despite the consciousness, negligence implies acting without such consciousness, but in circumstances which show that the actor has not exercised the caution incumbent upon him. The imputability in the case of negligence arises from the neglect of the civil duty of circumspection.



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64. The duty to care in cases whether civil or criminal including injury arising out of use of buildings is examined by courts, vis-à-vis occupiers of such buildings. In *Palsgraf v. Long Island Railroad Co.* [248 NY 339 : 162 NE 99 (1928)] , Cardozo, J. explained the orbit of the duty to care of an occupier as under:

"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 someone else... Even then, the orbit of the danger as disclosed to the eye of reasonable vigilance would be the orbit of the duty."

65. To the same effect is the decision in *Hartwell v. Grayson, Rollo and Clover Docks Ltd.* [Hartwell v. Grayson, Rollo and Clover Docks Ltd., 1947 KB 901 (CA)] where the duty of an occupier who invites people to a premises, to take reasonable care that the place does not contain any danger or to inform those coming to the premises of the hidden dangers, if any, was explained thus: (KB p. 913)

"... In my opinion the true view is that when a person invites another to a place where they both have business, the invitation creates a duty on the part of the inviter to take reasonable care that the place does not contain or to give warning of hidden dangers, no matter whether the place belongs to the inviter or is in his exclusive occupation."

69. In *Dabwali Fire Tragedy Victims Assn. v. Union of India* [ILR (2010) 1 P&H 368] to which one of us (Thakur, J.) was a party, the High Court of Punjab and Haryana held that both the School, as well as the owners of a premises on which the school function was held, were liable as occupiers for the tragic death of 406 persons, most of them children, caused by a fire which broke out on the premises during the function. In dealing with the question whether the owners of the premises, Rajiv Marriage



"... The School ought to have known that in a function which is open to general public, a pandal with a capacity of 500 to 600 persons spread over no more than an area measuring 100' x 70', a gathering of 1200 to 1500 persons could result in a stampede and expose to harm everyone participating in the function especially the children who were otherwise incapable of taking care of their safety. The School ought to have known that the availability of only one exit gate from the Marriage Palace and one from the pandal would prove insufficient in the event of any untoward incident taking place in the course of function. The School ought to have taken care to restrict the number of invitees to what could be reasonably accommodated instead of allowing all and sundry to attend and in the process increase the chances of a stampede. The School ought to have seen that sufficient circulation space in and around the seating area was provided so that the people could quickly move out of the place in case the need so arose. Suffice it to say that a reasonably prudent school management organising an annual function could and indeed was duty-bound to take care and ensure that no harm came to anyone who attended the function whether as an invitee or otherwise, by taking appropriate steps to provide for safety measures like fire-fighting arrangements, exit points, space for circulation, crowd control and the like. And that obligation remained unmitigated regardless whether the function was held within the school premises or at another place chosen by the management of the School, because the children continued to be under the care of the School and so did the obligation of the School to prevent any harm coming to them. The principle of proximity creating an obligation for the School qua its students and invitees to the function would make the School liable for any negligence in either the choice of the venue of the function or the degree of care that ought to have been taken to prevent any harm coming to those who had come to watch and/or participate in the event. Even the test of foreseeability of the harm must be held to have been satisfied from the point of view of



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an ordinary and reasonably prudent person. That is because a reasonably prudent person could foresee danger to those attending a function in a place big enough to accommodate only 500 to 600 people but stretched beyond its capacity to accommodate double that number. It could also be foreseen that there was hardly any space for circulation within the pandal. In the event of any mishap, a stampede was inevitable in which women and children who were attending in large numbers would be the worst sufferers as indeed they turned out to be. Loose electric connections, crude lighting arrangements and an electric load heavier than what the entire system was geared to take was a recipe for a human tragedy to occur. Absence of any fire-extinguishing arrangements within the pandal and a single exit from the pandal hardly enough for the people to run out in the event of fire could have put any prudent person handling such an event to serious thought about the safety of those attending the functioning especially the small children who had been brought to the venue in large numbers...."

70. Referring to the English decisions in *Wheat v. E. Lacon & Co. Ltd.* [1966 AC 552 : (1966) 2 WLR 581 : (1966) 1 All ER 582 (HL)], *Hartwell v. Grayson, Rollo* [*Hartwell v. Grayson, Rollo and Clover Docks Ltd.*, 1947 KB 901 (CA)], *Thomson v. Cremin* [(1956) 1 WLR 103 : (1953) 2 All ER 1185 (HL)] and *Emanuel (H. & N.) Ltd. v. Greater London Council* [(1971) 2 All ER 835 (CA)] , the High Court went on to hold as follows:

"93. In the instant case while the School had the absolute right to restrict the entry to the venue of the function being organised by it and everything that would make the function go as per its requirements, the owners had not completely given up their control over the premises, and were indeed present at the time the incident occurred. The facts and circumstances brought on record in the course of the enquiry establish that the School and the Marriage Palace owners were both occupying the premises and were, therefore, under an obligation to take care for the safety of not



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only the students, but everyone who entered the premises on their invitation or with their permission specific or implied. As to the obligation of an occupier to take care qua his invitees a long line of English decisions have settled the legal position...

72. To sum up, negligence signifies the breach of a duty to do something which a reasonably prudent man would under the circumstances have done or doing something which when judged from reasonably prudent standards should not have been done. The essence of negligence whether arising from an act of commission or omission lies in neglect of care towards a person to whom the defendant or the accused as the case may be owes a duty of care to prevent damage or injury to the property or the person of the victim. The existence of a duty to care is thus the first and most fundamental of ingredients in any civil or criminal action brought on the basis of negligence, breach of such duty and consequences flowing from the same being the other two. It follows that in any forensic exercise aimed at finding out whether there was any negligence on the part of the defendant/accused, the courts will have to address the above three aspects to find a correct answer to the charge.

(iv) Difference between negligence in civil actions and in criminal cases

73. Conceptually the basis for negligence in civil law is different from that in criminal law, only in the degree of negligence required to be proved in a criminal action than what is required to be proved by the plaintiff in a civil action for recovery of damages. For an act of negligence to be culpable in criminal law, the degree of such negligence must be higher than what is sufficient to prove a case of negligence in a civil action. Judicial pronouncements have repeatedly declared that in order to constitute an offence, negligence must be gross in nature. That proposition was argued by Mr Ram Jethmalani at great length relying upon the English decisions apart from those from this Court and the High Courts in the country.



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In fairness to Mr Salve, counsel appearing for CBI and Mr Tulsi appearing for the Association of Victims, we must mention that the legal proposition propounded by Mr Jethmalani was not disputed and in our opinion rightly so. That negligence can constitute an offence punishable under Section 304-A IPC only if the same is proved to be gross, no matter the word "gross" has not been used by Parliament in that provision is the settled legal position".

78. There is no gainsaying that negligence in order to provide a cause of action to the affected party to sue for damages is different from negligence which the prosecution would be required to prove in order to establish a charge of "involuntary manslaughter" in England, analogous to what is punishable under Section 304-A IPC in India. In the latter case it is imperative for the prosecution to establish that the negligence with which the accused is charged is "gross" in nature no matter that Section 304-A IPC does not use that expression. What is "gross" would depend upon the fact situation in each case and cannot, therefore, be defined with certitude".

80. We may now advert to the second and an equally, if not, more important dimension of the offence punishable under Section 304-A IPC viz. that the act of the accused must be the proximate, immediate or efficient cause of the death of the victim without the intervention of any other person's negligence. This aspect of the legal requirement is also settled by a long line of decisions of the courts in this country. We may at the outset refer to a Division Bench decision of the High Court of Bombay in *Emperor v. Omkar Rampratap* [(1902) 4 Bom LR 679] where Sir Lawrence Jenkins speaking for the Court summed up the legal position in the following words:

"... to impose criminal liability under Section 304-A of the Penal Code, 1860, it is necessary that the act 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 negligence. It must have been the causa



causans; it is not enough that it may have been the causa sine qua non."

82. To sum up: for an offence under Section 304-A to be proved it is not only necessary to establish that the accused was either rash or grossly negligent but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim.

83. As to what is meant by causa causans we may gainfully refer to Black's Law Dictionary (5th Edn.) which defines that expression as under:

"Causa causans.—The immediate cause; the last link in the chain of causation."

The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines causa causans as follows:

"Causa causans.—The immediate cause as opposed to a remote cause; the 'last link in the chain of causation'; the real effective cause of damage."

84. The expression "proximate cause" is defined in the 5th Edn. Of Black's Law Dictionary as under:

"Proximate cause.—That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. *Wisniewski v. Great Atlantic & Pacific Tea Co.* [226 Pa Super 574 : 323 A2d 744 (1974)] , A2d at p. 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a



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failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission."

33. The reasoning in the above case makes it very clear that culpable negligence or failure to exercise reasonable and proper care to guard against injury to an individual having regard to all circumstances is the imperative duty which the accused should have adopted. The Hon'ble Supreme Court had also held that negligence is the breach of duty to do something which a reasonably prudent man should, under the circumstances have done and when judged from reasonably prudent standards should not have done. The Hon'ble Supreme Court also, as seen from the extract above examined, the difference between negligence in civil actions and in criminal cases. They had very clearly established that the cause of action for the affected party to sue for damages is different from negligence which the prosecution would be required to prove in order to establish a charge of involuntary manslaughter in England, analogous to what is punishable under Section 304-A IPC in India.

34. With respect to the dimension of an offence punishable under section 304-A IPC, the act of the accused must be the proximate, immediate or efficient cause of the death of the victim. The Hon'ble Supreme Court had observed that the act of the accused must be proved to be the causa causans and not simply a Causa Sine Qua Non for the death of the victim in a case under Section 304-A IPC.

35. In the instant case, as is very clearly seen, the petitioner had engaged a Contractor, A2, to demolish his old building. During the process of demolishing the petitioner was present physically. He was in charge of the process. He was the Master of all the other accused. The other accused were working under him either directly or indirectly. The remuneration received by each of them was out of the money paid to A2, the contractor by the petitioner. The petitioner was therefore responsible for the life of each one of those who were under his command including A2, A3, A4 and A5 to demolish his old house. The petitioners should therefore have taken extra care as was expected. The death was a direct result or a reasonable probable consequence of his act of omission. These factors can be decided only during the course of trial. The prosecution must be afforded the opportunity to establish the circumstances leading to the injury caused to Murugan. That can be done only during trial. There are therefore no merits in



this petition and it has to suffer an order of dismissal.

36. In M/s. Neeharika, Infrastructure ... vs The State Of Maharashtra and another [2021 SCC Online SC 315], the Hon'ble Supreme Court had given the guidelines to be considered by the Court while entertaining an application under Section 482 Cr.P.C. While giving elaborate guidelines, it had been stressed that the power of quashing should be exercised sparingly with circumspection. It had also been stated that the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint. It had been further stated that quashing of a complaint should be an exception rather than an ordinary rule.

37. Keeping in mind the above guidelines which are only a few of the guidelines issued by the Hon'ble Supreme Court in the above Judgment and examining the facts of the present case, it is clear that trial is required to either prove or disprove the presence of the petitioner/A1 at the time of the incident and to prove /disprove the safety measures taken by the petitioner/A1 to prevent any injury being caused to all the persons employed by the Contractor which Contractor had been employed by the petitioner/A1.

38. It is extremely unfortunate that an accident which occurred more than six years back, has still not seen the process of trial, owing to the pendency of this petition for quash. I have been informed that at the time of admission, the petitioners herein were directed to deposit a sum of Rs.1/- lakh and the learned counsel for the petitioner produced a copy of the fixed deposit for Rs.1/- lakh dated 29.08.2016. I fear that the said amount would be poor compensation for the death of a human life.

39. I would therefore dismiss the present Criminal Original Petition. Let the said deposit remain and let the trial Court take a decision on payment of adequate compensation to the family members of the victim.

40. This Criminal Original Petition is dismissed. The XVIII Metropolitan Magistrate, Saidapet, Chennai, is directed to commence further proceedings in C.C.No. 5196 of 2015 and the accused are directed to co-operate in the trial process.

41. Whenever the trial commences after framing of charges, let the trial be conducted on a day today basis. Even if that is not practically possible, the learned Magistrate may grant only a maximum of three working days in between any two adjournments and should not grant more than two successive adjournments for the same reason. If the trial proceeds in the above manner, it can be concluded within a reasonable period of time. At any



rate, taking into consideration various other factors like the natural tendency of any accused to file applications or any other intervening circumstances, I would still direct the said Magistrate to conclude the trial on or before 31.12.2021.

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42. With the above said observations, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsg

To

- 1) The Inspector of Police
State of Tamil Nadu
E-1, Mylapore Police Station (Law & Order),
Chennai - 600 004.
- 2) The Metropolitan Magistrate Court,
Saidapet, Chennai.
- 3) Do this. Chief Metropolitan Magistrate Court,
Egmore, Chennai.
- 4) The Public Prosecutor
High Court, Madras-104

CrI.O.P.No. 14769 of 2016

VSN-II(CO)
CT(13/09/2021)