2026 INSC 1198

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 5171/2026
(@Petition for Special Leave to Appeal (Crl.) No.13889/2026)

MATIN SHANKARRAO BHOSALE & ANR ....Appellant(s)

VERSUS

STATE OF MAHARASHTRA & ANR ...Respondent(s)

O R D E R

J.B. PARDIWALA, J.

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court dated 25th February, 2026 in Criminal Application No. 239 of 2021, by which the application preferred by the appellants before us seeking quashing of the criminal proceedings, arising out of the First Information Report bearing No. 39 of 2020, and the consequent proceeding arising out of the same bearing Chargesheet No. 15 of 2020 came to be rejected.

3. It appears from the materials on record that the two appellants before us are sought to be prosecuted for the offence punishable under Section 304 read with Section 34 of the Indian Penal Code (for short, "the IPC").

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Date: 2026.11.05 16:49:21 IST
Reason:

4. The Respondent No. 2 before us is the de facto complainant, father of the deceased.

5. We take notice of the fact that the Respondent No.2, although served with the notice issued by this Court, yet has chosen not to remain present before this Court, either in person or through an advocate, and oppose this appeal.

6. The Respondent No.2, father of the deceased, lodged a First Information Report dated 19th February, 2020 with Mangrul Chawala Police Station, District Amravati.

7. The FIR reads thus:

> *"Complaint, Police Station, Mangrul Chavala dt 19/02/2020, named Sajilal Shyamlal Belsare, Occupation, Labourer, Caste Korku, Education 8th class, address: Village Motha, Tq. Chikhaldara, Dist. Amravati. I have come to the Police Station and I give my oral statement as under, reside with my family at the above mentioned address and I have been working as a labourer, I have three sons and two daughters, my daughter of three number Ku. Bharati Belsare, aged 12 yrs. is studying in 7th Standard in Prashnachinha Adivasi Ashram Shala, Mangrul Chavala and she is residing in the hostel.)*
>
> *I was working at the Brick Furnace of Sabir bhai, Achalpur as a labourer then on dtd. 15/02/2020 at about 5:30 p.m. Mr. Deshmukh the teacher of Prashnachinha Adivasi Ashram Shala, Mangrul Chavala came at Isegaon, Brick Furnace in a big four wheeler and it was told to me by him that my daughter is seek and therefore he requested me to come with him to see my daughter, then I gave the information to the owner of the Brick Furnace Mr. Sabir bhai on telephone and I, with my wife in a vehicle with Mr. Deshmukh Sir reached at Irwin*

Hospital and then we were taken to the postmortem room, there we got the information that the pillar of cement and bricks collapse upon my daughter Ku. Bharati and other girls of the Ashram Shala and these girls are injured and my daughter died during the medical treatment.

And therefore the entered into the postmortem room and we saw there was head injury to my daughter and the medical treatment is going on other injured girls and therefore we entered into the postmortem room, we found head injury to her and she was died. The director of the hostel and the director of Prashnachinha Adivasi Ashram Shala, Mangrul Chavala Mr. Matin Bhosale deliberately made the kaccha and standardless construction of pillar and Matin Bhosale and the Superintendent of the hostel did not take the precautions while constructing the said pillar and because of their carelessness the pillar of bricks and cement collapse upon my daughter Ku. Bharati, she injured and she died during the medical treatment.

The funeral programme of my deceased daughter is over and therefore I have come to Police Station to lodge a Police complaint against them. This is my complaint and it has been typed as per my suggestions and the print of the complaint read over to me, the complaint is correct."

8. Thus, the plain reading of the First Information Report and the other materials on record would indicate that the daughter of the Respondent No.2, namely Bharti, was studying in the 7th standard in Adivasi Ashram Shala, Mangrul Chawala. At the time of the unfortunate incident, Bharti was 12 years of age.

9. The appellants before us are the President and Superintendent of the School respectively.

10. The daughter of the Respondent No.2 met with a very freak accident within the school premises and ultimately died.

11. It appears that some construction of a pillar was going on which unfortunately collapsed and fell on the deceased, resulting in severe fatal injuries.

12. Investigation was undertaken and at the end of it, charge-sheet came to be filed against the appellants for the offence punishable under Section 304 read with Section 34 of the IPC respectively, i.e., culpable homicide not amounting to murder.

13. The appellants went before the High Court with a prayer that even if the entire case put up by the prosecution is believed or accepted to be true, none of the ingredients to constitute the offence of culpable homicide not amounting to murder could be said to be disclosed.

14. In other words, the appellants before us prayed before the High Court that the proceedings should be quashed as no offence could be said to have been made out so far as the two appellants are concerned.

15. The High Court declined to quash the criminal proceedings, observing as under:

> *"7. After hearing both the sides and on perusal of the entire investigation papers it reveals that there is no dispute that deceased was studying in the said Ashram School. The recitals of the FIR also shows that the construction around the*

said pillar was sub standard material. The pieces of the cement and bricks were forwarded to CA which discloses the percentage of the cement and sand aggregate 1:2:4 or 1:3:6. In the present case, Exh.Nos. 1 and 2 i.e., mortar pieces wrapped in plastic parcel A-1 and B-2 contains 18.54% and 14.78% and ratio of cement sand aggregate is about 1:2:2 and 1:3.5:2 respectively. Thus, while constructing the said pillar the ratio of cement was not maintained. It further reveals from the statement of the witnesses that the pillar was not constructed properly by constructing a solid base around the said pillar. The spot panchanama specifically states that pillar was not constructed by constructing solid base of cement and iron around the said pillar and therefore, the pillar was fallen.

8. The term negligence is used for the purpose of fastening with liability under the criminal law. Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence is given in law of torts Ratanlal and Dhirajlal ("edited by justice J.P.Singh"), wherein it is observed that negligence becomes actionable on account of injury resulting from the act or omission amounted to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage". In the case of Jacob Mathew vs. State of Punjab and another reported in (2005) 6 SCC 1 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."

9. Thus, negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence as recognized are three: 'duty', 'breach' and 'resulting damage' that is to say:-

1. the existence of a duty to take care, which is owed by the defendant to the complainant;
2. the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and
3. damage, which is both causally connected with such breach and recognized by the law, has been suffered by the complainant.

10. In the light of the above settled law if the facts of the present case are taken into consideration admittedly there is breach of duty on the part of the present applicants and due to the breach of duty the deceased has lost her life as well as other students sustained injuries. By applying the law laid down by the Hon'ble Apex Court in the case of State of Haryana and others vs. Bhajanlal and others reported in 1992 Supp(1) Supreme Court Cases 335, wherein parameters are laid down while considering the

application for quashing of the FIR wherein it is stated as under:

> *"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;.*
>
> *(b) where the allegations in the First information Report and other materials, if any, accompanying the FI.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
>
> *(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
> *(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*
>
> *(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*
>
> *(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the*

concerned Act, providing efficacious redress for the grievance of the aggrieved party,

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. After applying the said parameters to the facts of the present case admittedly at this stage, there is sufficient material to show that there is breach of duty on the part of the present applicants. It is not mere an accident, but it is omission on the part of the present applicants which shows that due care caution has not been taken while constructing the said pillar. Though there was no intention to cause death but admittedly knowledge was there that sub standard material while constructing the base for installation of pillar may cause harm or death to the person, Despite the same the sub standard material was used.) Proper base was not prepared while installing the said pillar sufficiently shows that there was negligence on the part of the present applicants and therefore application deserves to be rejected."

16. Being dissatisfied with the judgment and order passed by the High Court, the appellants are here before us with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

17. Mr. Kuldeep Jauhari, the learned counsel appearing for the appellants vehemently submitted that the High Court committed a serious error in declining to quash the criminal proceedings. He submitted that the facts emerging from the papers of the chargesheet do not reveal

commission of the offence of culpable homicide not amounting to murder punishable under Section 304 Part-II of the IPC.

18. Mr. Jauhari submitted that having regard to the role attributed to the appellants herein, no offence of even a rash or negligent act punishable under Section 304A is made out. The learned counsel argued that the appellants herein are sought to be prosecuted on the ground that as responsible office bearers of the school no due care was being taken while the pillar was being constructed.

19. The learned counsel submitted that Section 304 IPC has no application at all since even if the entire case of the prosecution is accepted as true, there is no case of a voluntary commission of offence against the present appellants.

20. The learned counsel submitted that if Section 304 of the IPC is not applicable on the face of the case of the prosecution, then Section 304-A would also not be applicable against the appellants herein. He submitted that under Section 304-A IPC, there is a causal chain which consists of many links. It is only that which contributes to the cause of all causes, namely, the *causa causans* and not *causa sine-qua-non*, which fixes the culpability. In other words, it is submitted that it is not enough for the prosecution to show that the appellants inaction or lack of duty to remain careful at the time of construction was one of the causes of death.

It must show that it is the direct consequence, which in the present case, has not been established even *prima-facie*.

21. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal the same be allowed and the appellants herein be discharged from the prosecution.

SUBMISSIONS ON BEHALF OF THE STATE

22. This appeal has been vehemently opposed by Mr. Aaditya Aniruddha Pande, the learned counsel appearing for the State. He submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in rejecting the quashing application. He submitted that while deciding a quashing application, the Court has only to consider a *prima facie* case. The Court has not to consider whether the evidence on record is sufficient to convict the accused. The Court has to merely consider whether there are suspicious circumstances against the accused so as to frame a charge against him. He submitted that it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of the evidence and probabilities, which is really his function after the trial starts. He submitted that a twelve-year-old girl studying in the school lost her life in a shocking and regrettable manner.

23. It was argued that at least a case of rash and negligent act punishable under Section 304A of the IPC could be said to be made out and let the trial court decide what offence the appellants could be said to have committed.

24. In such circumstances referred to above, Mr. Pande prayed that there being no merit in this appeal, the same be dismissed.

ANALYSIS

25. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order.

26. We may highlight few facts emerging from the materials on record, which are not in dispute.

(a) The appellant No. 1 is serving as the President in the school

(b) The appellant No. 2 is serving as the superintendent of the school.

27. The relevant portion of Section 304 of the IPC reads as under:-

"Whoever commits culpable homicide not amounting to murder shall be punished with ... 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. . . . 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."

28. A plain reading of the above Section makes it clear that it is in two parts. The first part of the Section is generally referred to as "Section 304 Part-I", whereas the second part as "Section 304, Part-II". It would thus, appear that if such bodily injury as is likely to cause death is intentionally caused and results in the death of the victim, the case would fall under Part-I and not under Part-II. Stated differently, Part-II comes into play when death is caused by doing an act with the knowledge that it is likely to cause death and when such act is the infliction of a bodily injury, the infliction must not be intentional. A person who intentionally causes the bodily injury with knowledge that such act is likely to cause death must necessarily be a person who does an act with the intent to cause bodily injury likely to result in death.

29. The Makers of the Code observed:

"The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of

the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place, unless such intention or knowledge can from the evidence be concluded to have really existed".

30. The Makers further stated:

"It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men's conduct and their intentions. We know that a sane man does not usually commit certain acts heedlessly or unintentionally and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion".

31. We now look into Section 304A of the IPC and compare it with Section 304 IPC.

32. Section 304A was inserted by the India Penal Code (Amendment) Act, 1870 (Act XXVII of 1870) and reads thus:

"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."

33. The section deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of Sections 299 and 300, IPC respectively and covers those cases where death has been caused without

'intention' or 'knowledge'. The words "not amounting to culpable homicide" in the provision are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death, nor knowledge that the act done will in all probability result into death. It applies to acts which are rash or negligent and are directly the cause of death of another person.

34. Thus, there is a fine distinction between Section 304 and Section 304A. Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300, IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the 'motivating force' of the act complained of, Section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.

35. In *Empress v. Idu Beg*, (1881) ILR 3 All 776, Straight, J. made the following pertinent observations which have been quoted with approval by various

Courts including this Court:

> *"Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. 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".*

36. Though the term 'negligence' has not been defined in the Code, it may be stated that negligence is the 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 reasonable and prudent man would not do. [*See Mahadev Prasad Kaushik Vs. State of U.P - AIR 2009 SC 125].*

37. In the aforesaid context, we may quote with profit the decision of this Court in the case of *Naresh Giri v. State of M.P.,* reported in (2008) 1 SCC (Cri.) 324. In the said case, a bus was going from Ahrauli towards Kailaras. While it was near a Railway crossing, an accident took place. A train hit the bus at the railway crossing. In the accident, the bus which was being

driven by the appellant therein was badly damaged and as a result of the accident, several passengers got injured and two persons died. After completion of the investigation, chargesheet was filed. The charges were framed in relation to the offence punishable under Section 302 IPC and alternatively, under Sections 304, 325 and 323 of the Penal Code respectively. Questioning the correctness of the charges framed, the revision petition was filed. The case of the appellant therein was that Section 302 IPC had no application to the facts of the case. The High Court rejected the plea of the appellant. The High Court was of the view that on the basis of the material available, the charges were rightly framed, and the intention of the appellant therein could be gathered at the time when the evidence would be adduced. It was his case that at the best Section 304A IPC would be attracted.

38. In the aforesaid background, this Court made the following observations, which are worth taking note of.

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

8. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence, a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

9. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edition) Volume 34 paragraph 1 (para 3) as follows :

"Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each

particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence, where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger, the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two".

10. In this context the following passage from Kenny's Outlines of Criminal Law, 19th Edition (1966) at page 38 may be usefully noted :

> *"Yet a man may bring about an event without having adverted to it at all, he may not have foreseen that his actions would have this consequence and it will come to him as a surprise. The event may be harmless or harmful, if harmful, the question rises whether there is legal liability for it. In tort, (at common law) this is decided by considering whether or not a reasonable man in the same circumstances would have realised the prospect of harm and would have stopped or changed his course so as to*

avoid it. If a reasonable man would not, then there is no liability and the harm must lie where it falls. But if the reasonable man would have avoided the harm, then there is liability and the perpetrator of the harm is said to be guilty of negligence. The word 'negligence' denotes, and should be used only to denote, such blameworthy inadvertence, and the man who through his negligence has brought harm upon another is under a legal obligation to make reparation for it to the victim of the injury who may sue him in tort for damages. But it should now be recognized that at common law there is no criminal liability for harm thus caused by inadvertence. This has been laid down authoritatively for manslaughter again and again. There are only two states of mind which constitute mens rea and they are intention and recklessness. The difference between recklessness and negligence is the difference between advertence and inadvertence they are opposed and it is a logical fallacy to suggest that recklessness is a degree of negligence. The common habit of lawyers to qualify the word "negligence" with some moral epithet such as 'wicked' 'gross' or 'culpable' has been most unfortunate since it has inevitably led to great confusion of thought and of principle. It is equally misleading to speak of criminal negligence since this is merely to use an expression in order to explain itself."

11. "Negligence", says the Restatement of the law of Torts published by the American Law Institute (1934) Vol. I. Section 28 "is conduct which falls below the standard established for the protection of others against unreasonable risk of harm". It is stated in Law of Torts by Fleming at page 124 (Australian Publication 1957) that this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. In Director of Public Prosecutions v. Camplin (1978) 2 All ER 168 it was observed by Lord Diplock that "the reasonable man" was comparatively late arrival in the laws of

provocation. As the law of negligence emerged in the first half of the 19th century it became the anthropomorphic embodiment of the standard of care required by law. In order to objectify the law's abstractions like "care" "reasonableness" or "foreseeability" the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform.

*12. In Syed Akbar v. State of Karnataka, (1980) 1 SCC 30, it was held that "where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord Atkin in Andrews v. Director of Public Prosecutions ((1937) (2) (*All ER 552) *simple lack of care such as will constitute civil liability, is not enough; for liability under the criminal law 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."*

13. *According to the dictionary meaning 'reckless' means 'careless', 'regardless' or heedless of the possible harmful consequences of one's acts'. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognizing the existence of the risk and nevertheless deciding to ignore it. In R. v. Briggs (1977) 1 All ER 475 it was observed that a man is reckless in the sense required when he carries out a deliberate act knowing that there is some risk of damage resulting from the act but nevertheless continues in the performance of that act.*

14. *In R. v. Caldwell (1981) 1 All ER 961, it was observed that:-*

"Nevertheless, to decide whether someone has been 'reckless', whether harmful consequences of a particular kind will result from his act, as distinguished from his actually intending such harmful consequences to follow, does call for some consideration of how the mind of the ordinary prudent individual would have reacted to a similar situation. If there were nothing in the circumstances that ought to have drawn the attention of an ordinary prudent individual to the possibility of that kind of harmful consequence, the accused would not be described as 'reckless' in the natural meaning of that word for failing to address his mind to the possibility; nor, if the risk of the harmful consequences was so slight that the ordinary prudent individual on due consideration of the risk would not be deterred from treating it as negligible, could the accused be described as reckless in its ordinary sense, if, having considered the risk, he decided to ignore it. (In this connection the gravity of the possible harmful consequences would be an important factor. To endanger life must be one of the most grave). So, to this extent, even if one ascribes to 'reckless' only the restricted meaning adopted by the Court of Appeal in Stephenson and Briggs, of foreseeing that a particular kind of harm might happen and yet going on to take the risk of it, it involves a test that would be described in part as 'objective' in current legal jargon. Questions of criminal liability are seldom solved by simply asking whether the test is subjective or objective."

15. The decision of R. v Caldwell (supra) has been cited with approval in R v. Lawrence (1981) 1 All ER 974 and it was 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".

15A. Normally, as rightly observed by the High Court charges can be altered at any stage subsequent to the framing of charges. But the case at hand is one where prima facie Section 302 IPC has no application."

39. In the overall facts of the case, we have reached the conclusion that the case on hand is not one of voluntary commission of offence against a person. The harmfulness inflicted intentionally or knowingly or caused directly and wilfully would attract Section 304 IPC. We are of the view that the mere failure to attain the standard of care prescribed by the law, thereby committing breach of such duty as observed by the High Court would not be a criminal act. The contractor to whom the work was assigned could at the most be *prima facie* guilty of negligence, being in the knowledge of the fact that poor construction or inferior construction may lead to an accident or a casualty. However, that by itself would not suggest that the appellants had the knowledge that inferior construction in all probability was likely to cause death of any student studying in the school.

40. The above takes us to the question whether the appellants herein should face the charge under Section 304A of the IPC or not.

41. In a prosecution for an offence under Section 304A of the IPC, the Court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act, and that act was the proximate and efficient cause of the death without the intervention of others' negligence. To put it in other words, whether the mere fact that the appellants herein as the Administrators of the school failed to take appropriate care to ensure the safety of the students by not ensuring proper construction of pillar by itself is sufficient to establish an offence under Section 304A IPC. The answer to this question will determine whether the appellants act as alleged by the prosecution is the *causa causans* or has there been a *causa interveniens*, which has broken the chain of causation so as to make their act, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. In this context, it may be observed that in a case of this nature, the death of a young girl aged twelve however, shocking and regrettable it may be, ought not to allow the mind to boggle while considering the aforesaid question.

42. As to what is meant by *causa causans*, has been explained by this Court in the case of *Sushil Ansal v. State through Central Bureau of Investigation*, (2014)6 SCC 173, as under :

> *"As to what is meant by causa causans we may gainfully refer to Black's Law Dictionary (Fifth Edition) 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"*

The expression "proximate cause" is defined in the 5th Edition 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 vs. Great Atlantic & Pacific Tea Company, 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 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."*

43. We may also refer to the earlier decision of this Court in *Kurban Hussein Mohamedalli Rangawalla v. State of*

Maharashtra, AIR 1965 S.C. 1616. On the interpretation of Section 304-A, holding:

> *"4. We may in this connection refer to Experor v. Omkar Rampratap, 4 Bom LR 679, where Sir Lawrence Jenkins had to interpret S. 304-A and observed 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 the 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 causa sine qua non."*
>
> *This view has been generally followed by High Courts in India and is in our opinion the right view to take of the meaning of S.304-A. It is not necessary to refer to other decisions, for as we have already said this view has been generally accepted. Therefore, the mere fact that the fire would not have taken place if the appellant had not allowed burners to be put in the same room in which turpentine and varnish were stored, would not be enough to make him liable under S.304-A, for the fire would not have taken place, with the result that seven persons were burnt to death, without the negligence of Hatim. The death in this case was, therefore, in our opinion not directly the result of a rash or negligent act on the part of the appellant and was not the proximate and efficient cause without the intervention of another's negligence. The appellant must, therefore, be acquitted of the offence under S.304-A."*

44. In our view, having regard to the materials on record, the incident in this case cannot be treated as a direct and proximate cause of the negligence, even if we assume one on the part of the appellants in not taking

due care. Many other factors might have resulted in the unfortunate incident. It was the contractor and his team who were actually undertaking the construction. If little care would have been taken by the contractor to ensure due safety of the students then probably this incident would not have occurred. Therefore, the alleged negligence from the part of the appellants herein cannot be regarded as the *causa causans*. Although it may be a *causa sine qua non.*

45. It must be pointed out that rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. There are degrees of negligence and rashness and in order to amount to criminal rashness or criminal negligence one must find that the rashness has been of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences. Criminal negligence is gross and culpable neglect, that is to say, a failure to exercise that care and failure to take that precaution which, having regard to the circumstances, it was the imperative duty of the individual to take. Culpable rashness is acting with consciousness that mischievous consequences are likely to follow although the individual hopes, even though he hopes sincerely, that such consequences may not follow. The criminality lies in not taking the precautions to prevent the

happening of the consequences in the hope that they may not happen. The law, in our view, does not permit a man to be un-cautious on a hope however earnest or honest that hope may be.

46. In the case of - *'A. W. Lazarus v. The State'*, AIR 1953 All 72 (A), a Bench of the Allahabad High Court held, following the decisions in - *'Empress of India v. Idu Beg'*, 3 All 776 (B) and - '*H.W. Smith v. Emperor*', AIR 1926 Cal 300 (C), that criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused. It was pointed out that the criminality in such a case lay in running the risk of doing such an act with recklessness or indifference as to the consequences. The Bench further held that the criminal negligence under Section 304-A, I.P.C. was gross and culpable neglect of failure to exercise that reasonable and proper care and to take precautions to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances attending the charge, it was the imperative duty of the accused person to have adopted. Another important element which goes to make the offence is that the act of the accused must be found to be the immediate cause of the death, that is to say, the act and the death must be *'causa causans'*.

47. We may here refer to a very instructive judgment of the House of Lords in - 'Andrews v. Director of Public Prosecutions', 1937-2 All ER 552 (D). In this case Lord Atkin reviewed several of the earlier cases and delivered the leading opinion of the House. Lord Atkin pointed cut that the connotations of *'mens rea'* are not helpful in distinguishing between degrees of negligence, nor do the ideas of crimes and punishments in themselves carry a jury much further in deciding whether, in a particular case, the degree of negligence shown is a crime and deserves punishment. According to Lord Atkin, "the principle to be observed is that cases of manslaughter in driving motor cars are but instances of a general rule applicable to all charges of homicide by negligence. Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence, and a very high degree of negligence is required to be proved before the felony is established."

48. Lord Atkin observed that the most appropriate epithet which can be applied to such cases is "reckless". He further pointed out that "it is difficult to visualize a case of death caused by "reckless" driving, in the connotation of that term in ordinary speech, which would not justify a conviction for manslaughter, but it is probably not all-embracing, for "reckless" suggests an indifference to risk, whereas the accused may have appreciated the risk, and intended to avoid it, and yet shown in the means adopted to avoid the risk such a

high degree of negligence as would justify a conviction."

49. In an earlier case Lord Ellenborough had pointed out that to substantiate the charge of manslaughter the prisoner must be found to have been guilty of criminal misconduct arising either from the grossest ignorance or the most criminal inattention. Lord Atkin explained this observation of Lord Ellenborough in these words :

> *"The word "criminal" in any attempt to define a crime is perhaps not the most helpful, but it is plain that Lord Ellenborough meant to indicate to the jury a high degree of negligence."*

50. Attention was also drawn by Lord Atkin to a passage in a considered judgment of Lord Hewart, Lord Chief Justice the passage to which attention was drawn was this:

> *"In a criminal Court, on the contrary, the amount and degree of negligence are the determining questions. There must be 'mens rea'."*

But, as was pointed out by Lord Atkin, the connotation of *mens rea* do not always prove helpful in determining the guilt of an accused in a particular case.

51. The essence of criminal liability under Section 304-A IPC is culpable rashness or negligence and not any rashness or negligence. The difference between the two is what marks off a civil from a criminal liability. The distinction is often an intricate matter and depends on the particular time, place and circumstances. In civil

law negligence means inadvertence, which, if it resulted in injurious consequences to person or property, may involve liability to compensate for the damage. In Halsbury's Laws of England, 3rd Edn. Vol. 28, paragraph 1, it is stated :

> *"Negligence is a specific tort and in any given circumstances is the failure to exercise that care with which the circumstances demand. What amounts to negligence depends on the facts of each particular case and the categories of negligence are never closed. It may consist in omitting to do something which ought to be done or in doing something which ought to be done, either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the accompanying circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury."*

52. The consequence flows from a state of mind which is blank or devoid of any advertence, and the liability for such consequence is to be judged from the standpoint of reasonable foreseeability and the failure to exercise the care which such foreseeability necessarily implies. That we conceive to be the principle of tortious liability for negligence. Kenny in his "Outlines of Criminal Law'' at page 29 observes,

> *"But if the reasonable man would have avoided the harm then there is liability and the perpetrator of the harm is said to be guilty of negligence. The*

word 'negligence', therefore, in our jurisprudence is used to denote blameworthy inadvertence, and the man who through his negligence has brought harm upon another is under a legal obligation to make reparation for it to the victim of the injury, who may sue him in tort for damages. But it should now be recognised that at common law there is no criminal liability for harm thus caused by inadvertence.....The truth may be that he did not foresee the consequences as a reasonable man would have done, and that he was negligent in the true sense of the word, and therefore civilly, although not criminally, liable."

53. Kenny further points out that for criminal liability for negligence, there must be something more than such blameworthy inadvertence. This aspect is also adverted to in paragraph 1374 of Halsbury's Laws of England, 3rd Edn. Volume 10,

"A higher degree of negligence is necessary to render a person guilty of manslaughter than to establish civil liability against him. Mere carelessness is not enough. Negligence in order to render a person guilty of manslaughter must be more than a matter of compensation between subjects; it must show such disregard for the life and safety of others as to amount to a crime against the State. Whether negligence is to be regarded as of such a nature is a question for the jury, after they have been properly directed by the Judge as to the standard to be applied, and depends on the facts of the particular case. The number of persons affected by a single act of negligence does not affect the decree of negligence."

54. While on this aspect, it is also instructive to refer to *Rex v. Williamson*, 1807-3 C and P 635, a case where a

man who practised as an accoucheur, owing to a mistake in his observation of the actual symptoms, inflicted on a patient terrible injuries from which she died. After pointing out that in a civil case once negligence was proved, the degree of negligence was irrelevant, Lord Ellenborough, the Lord Chief Justice, said.

> *"In a criminal court, on the contrary, the amount and degree of negligence are the determining questions. There must be mens rea. In explaining to juries the test which they should apply to determine whether the negligence in a particular case, amounted or did not amount to a crime, Judges have used 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."*

55. Mere negligence or rashness is, therefore, not enough to bring a case within the ambit of Section 304A IPC. Negligence or rashness proved by evidence must be such as should necessarily carry with it a criminal liability. Whether such liability is present may depend on the degree of culpability having regard in each case to the particular time, place and circumstances. If it is merely a case of compensation or reparation for injury or damage caused to a person or property, it is clearly not punishable under the said Section. The culpability to be criminal should be such as concerns not merely the person injured or property damaged but the safety

of the public on the road. But the nature and extent of the injury or damage will be irrelevant in fixing criminal liability for negligence under the sections.

56. We may quote with profit the case of *Ambalal D. Bhatt v. State of Gujarat*, reported in (1972) 3 SCC 525, wherein the following observations made by this Court are worth taking note of.

> *"8. The learned Advocate contends that even if one batch number was given to several lots prepared on 12-11-62 as was done in respect of batch no 211105, the evidence discloses that this was not an isolated case but such practice was uniformly followed in S. C. L. Ltd. for which the appellant could not alone be held liable. In the circumstances the non-compliance with the rules for giving a batch number to every lot does not make the act of the appellant the causa causans of the death of the persons who were injected with glucose saline prepared by him because it was not only the duty of the Analyst Prabhakaran to test the material before they are issued to the injection department but also to test the solution in such a way as would trace lead nitrate in the sodium chloride content of the solution. As Prabhakaran had not applied the proper test and that too knowing fully well that several lots were given one batch number, he cannot be absolved of his responsibility to take representative samples for testing them instead of testing only one bottle out of 450 bottles comprising batch no. 211105. On this premise it is contended that though section 304A covers various fields of activity, an offence is committed only if a person charged is shown to have neglected to take such action as he is reasonably expected to take to avoid injury to others and that such reasonable steps that are expected to be taken by him should show that there was a failure to take such elementary steps it was necessary for him to take. Inasmuch as in*

all cases under section 304A there is a casual chain which consists of many links, it is only that which contributes to the cause of all causes, namely, the causa causans and not causa sine qua non which fixes the capability. In other words, it is submitted that it is not enough for the prosecution to show that the appellant's action was one of the causes of death. It must show that it is the direct consequence, which in this case has not been established. On the other hand, according to the learned Advocate the appellant is separated by two important steps which intervene before the glucose saline is sold for being administered to the needy. These are :

(1) *that not only should the materials be tested but the solution should be tested properly to detect the dangerous components* of the preparation which was the duty of the Chief Analyst; and

(2) *that the production report and the analysis report have to be seen by the Production Superintendent who is to satisfy himself that proper tests have been carried out before certifying them for sale. The persons who are directly responsible for the saline solution to be certified for sale are the Chief Analyst as well as the Production Superintendent and not the appellant.*

9. It is, however, the case of respondent State that had the appellant not given a single batch number to all the four lots when he prepared the offending glucose saline, the analysis by the Chief Analyst would analysis by the Chief Analyst would have certainly discovered the heavy deposits of lead nitrate in the sodium chloride and the lot which contained this would have been rejected. As the appellant has been negligent in conforming to the rules, the deaths were the direct consequence of that negligence.

10. It appears to us that in a prosecution for an offence under section 304A, the mere fact that an accused contravenes certain rules or regulations in the doing of an act which causes death of another, does not establish that the death was the result of a rash or negligent act or that any such act was the proximate and efficient cause of the death. If that were so, the acquittal of the appellant for contravention of the provisions of the Act and the Rules would itself have then examined to what extent additional evidence of his acquittal would have to be allowed, but since that is not the criteria, we have to determine whether the appellant's act in giving only one batch number to all the four lots manufactured on 12-11-62 in preparing batch no. 211105 was the cause of deaths and whether those deaths were a direct consequence of the appellant's act that is, whether the appellant's act is the direct result of a rash and negligent act and that act was the proximate and efficient cause without the intervention of another's negligence. As observed by Sir Lawrence Jenkins in Emperor v. Omkar Rampratap. (1902) 4 Bom LR 679 the act causing the deaths "must be the cause causans; it is not enough that it may have been the causa sine qua non". This view has been adopted by this Court in several decisions. In Kurban Hussein Mohem-medali Rangwala v. State of Maharashtra, 1965-2 SCR 622 = (AIR 1965 SC 1616), the accused who had manufactured wet paints without a licence was acquitted of the charge under section 304A because it was held that the mere fact that he allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it would be a negligent act, would not be enough to make the accused responsible for the fire which broke out. The cause of the fire was not merely the presence of the burners within the room in which varnish and turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out, but was also due to the overflowing of froth out of the barrels. In Suleman Rahiman Mulani v. State of Maharashtra (1968) 2 SCR 515 = (AIR 1968 SC 829) the accused who was driving a car only with

a learner's licence without a trainer by his side, had injured a person. It was held that by itself was no sufficient to warrant a conviction under section 304A. It would be different if it can be established as in the case of Balachandra v. State of Maharashtra, (1968) 3 SCR 766 = (AIR 1968 SC 1319) that deaths and injuries caused by the contravention of a prohibition in respect of the substance which are highly dangerous as in the case of explosives in a cracker factory which are considered to be of a highly hazardous and dangerous nature having sensitive composition where even friction or percussion could cause an explosion, that contravention would be the causa causans.

11. Bearing these principles in view, what we have to see is :

(1) whether there was contravention of the rule? If so, to what extent that contravention by the appellant contributed to the non-discovery of lead nitrate in sodium chloride content of the glucose saline in Batch No. 211105? (2) Whether sodium chloride for which the said solution was prepared was obtained by the appellant from sources other than the Stores of S. C. I. Ltd.? and (3) Whether the method adopted in testing the said batch by Prabhakaran would have, but for the contravention of the rules requiring the giving of one batch number to each lot, detected the presence of lead nitrate when he analysed samples of the offending batch of glucose saline prepared by the accused. The answers to these questions will determine whether the appellant's act is the causa causans or has there been a cause interveniens which has broken the chain of causation so as to make his act, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. In this context it may be observed that in a case of this nature where as many as 12 persons lost their lives as a result of the parenteral administration of the drug comprised in Batch No. 211105 prepared by the appellant,

those deaths however shocking and regrettable they may be, ought not to allow the mind to boggle while appreciating the evidence which must necessarily be free from any such consideration."

(emphasis supplied)

57. We may also quote with profit a decision of this Court in the case of *Balwant Singh v. State of Punjab*, reported in 1994 Supp (2) SCC 67. The following observations of this Court are worth taking note of.

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

58. In the case of *Dr. P.B Desai v. State of Maharashtra and anr.*, reported in AIR 2014 SC 795, this Court has explained in details as to when criminal liability would

be attracted in cases of medical negligence. It is no doubt true that this Court was dealing with an issue whether the role of the appellant as a doctor in that case amounted to a rash or a negligent act as to endanger the life of the patient. This Court made the following observations:-

> *"(4) Breach of Duty to Take Care: Consequences*
>
> *42. If the patient has suffered because of negligent act/ omission of the doctor, it undoubtedly gives right to the patient to sue the doctor for damages. This would be a civil liability of the doctor under the law tort and/or contract. This concept of negligence as a tort is explained in Jacob Mathews v. State of Punjab and Another 2005(6) SCC1, in the following manner:*
>
> > *"10. The jurisprudential concept of negligence defines any precise definition. Eminent jurists and leading judgments have assigned various meanings to negligence. The concept as has been acceptable to Indian jurisprudential thought is well stated in the Law of Torts, Ratanlal & Dhirajlal (24th Edn., 2002, edited by Justice G.P. Singh).*
> >
> > *Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property.... The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the*

former's conduct within the scope of the duty; (2) breach of the said; and (3) consequential damage. Cause of -action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort."

43. *Such a negligent act, normally a tort, may also give rise to criminal liability as well, though it was made clear by this Court in Jacob's Case (supra) that jurisprudentially the distinction has to be drawn between negligence under Civil Law and negligence under Criminal Law. This distinction is lucidly explained in Jacob's Case, as can be seen from the following paragraphs:*

"12. The term "negligence" is used for the purpose of fastening the defendant with liability under the civil law and, at times, under the criminal law. It is contended on behalf of the respondents that in both the jurisdictions, negligence is negligence, and jurisprudentially no distinction can be drawn between negligence under civil law and negligence under criminal law. The submission so made cannot be countenanced inasmuch as it is based upon a total departure from the established terrain of thought running ever since the beginning of the emergence of the concept of negligence up to the modern times. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. The essential ingredient of mens rea cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence. In R. v. Lawrence Lord Diplock spoke in a Bench of five and the other Law Lords agreed with him. He reiterated his opinion in R. v. Caldwell3 and dealt with the concept of recklessness as constituting mens rea in criminal law. His Lordship warned against adopting the simplistic approach of treating all problems of criminal liability as soluble by

classifying the test of liability as being "subjective" or "objective", and said: (All ER p. 982e-f) "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 recognised that there was such risk, he nevertheless goes on to do it."

13. *The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called optimising violations, -- may be motivated by thrill-seeking. These are clearly reckless.*

14. *In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in Andrews v. Director of Public Prosecutions stated: (All ER p. 556 C)*

"Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal

law there are degrees of negligence, and a very high degree of negligence is required to be proved before the felony is established."

Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. In Riddell v. Reid4a (AC at p. 31) Lord Porter said in his speech —

"A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability."

15. *The fore-quoted statement of law in Andrews has been noted with approval by this Court in Syad Akbar v. State of Karnataka. The Supreme Court has dealt with and pointed out with reasons the distinction between negligence in civil law and in criminal law. Their Lordships have opined that there is a marked difference as to the effect of evidence viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the -- defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment."*

xxx *xxx* *xxx*

44. *Thus, in the civil context while we consider the moral implications of negligent conduct, a clear view of the state of mind of the negligent doctor might not require strictly. This is for the reason the law of tort is ultimately not concerned with the moral culpability of the defendant, even if the language of fault is used in determining the standard of care. From the point of view of civil law*

it may be appropriate to impose liability irrespective of moral blameworthiness. This is because in civil law two questions are at issue: Was the defendant negligent? If so, should the defendant bear the loss in this particular set of circumstances? In most cases where negligence has been established, the answer to the second question will be in the affirmative, unless the doctrine of remoteness or lack of foresee ability militates against a finding of liability, or where there is some policy reason precluding compensation. The question in the civil context is, therefore, not about moral blame, even though there will be many cases where the civilly liable defendant is also morally culpable.

(5) Criminal Liability : When attracted

45. *It follows from the above that as far as the sphere of criminal liability is concerned, as mens rea is not abandoned, the subjective state of mind of the accused lingers a critical consideration. In the context of criminal law, the basic question is quite different. Here the question is: Does the accused deserve to be punished for the outcome caused by his negligence? This is a very different question from the civil context and must be answered in terms of mens rea. Only if a person has acted in a morally culpable fashion can this question be answered positively, at least as far as non-strict liability offenses are concerned.*

46. *The only state of mind which is deserving of punishment is that which demonstrates an intention to cause harm to others, or where there is a deliberate willingness to subject others to the risk of harm. Negligent conduct does not entail an intention to cause harm but only involves a deliberate act subjecting another to the risk of harm where the actor is aware of the existence of the risk and, nonetheless, proceeds in the face of the risk. This, however, is the classic definition of recklessness, which is conceptually different from negligence and which is widely accepted as being a basis for criminal liability."*

59. For all the foregoing reasons, we are of the view that so far as the appellants are concerned, they stand on a different footing as compared to the other accused if any. In our view, the appellants should not be asked to face the trial either for the offence of a rash or a negligent act punishable under Section 304A of the IPC or Section 304 IPC. At the most, the person who could be said to be *prima facie* responsible for the unfortunate death of the student is the contractor. This observation, of course, is *prima-facie* and subject to the evidence that may be led at the time of the trial if at all contractor is also one of the accused.

60. However, the act attributed to the appellants cannot be said to be the *causa causans*, but there was a cause *interveniens,* which broke the chain of causation so as to make the act of the applicant though a negligent one, not the immediate cause.

61. Dictating this order was a very painful experience. The very thought of a twelve-year-old girl getting crushed beneath the pillar of her own school makes our heart bleed with pain and agony. We can also imagine the pain and agony the parents of the deceased must be undergoing even as on today. However, such thoughts should not allow the mind of a judge to get boggled, otherwise justice cannot be done. However, harsh one may find the law, but at the same time, the law remains the law, and it has got to be respected.

62. In the result, this appeal is allowed. The criminal proceedings arising from Chargesheet No. 15 of 2020 are hereby quashed so far as appellants are concerned.

63. The trial may proceed further against any other co-accused, in accordance with law.

.....J
(J.B. PARDIWALA)

.....J
(MANMOHAN)

NEW DELHI
02ND NOVEMBER, 2026.