Reserved on : 19.08.2026
Pronounced on : 16.10.2026

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 10711 OF 2026

BETWEEN:

SHRI NADEEM UR REHMAN
AGED ABOUT 51 YEARS
S/O ABDUL SUBAN
RESIDING AT NO. 736,
4TH CROSS, 1ST MAIN,
S.S. NAGARA BANNIMANTAP
MYSURU – 570 015.

...PETITIONER

(BY SRI PALLAVA R., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   BY N.R. TRAFFIC P.S.
   AT:ASHOKA ROAD
   LASHKAR MOHALLA
   MYSURU – 570 021
   REPRESENTED BY LEARNED S.P.P
   HIGH COURT OF KARNATAKA
   BENGALURU – 560 001.

2. SHRI ANNEGOWDA
AGED ABOUT 69 YEARS
S/O LATE NANJEGOWDA
RESIDING AT NO. 59
CHANDRAMOULESHWARA
TEMPLE STREET,
SIDDALINGAPURA VILLAGE,
MYSURU TALUK
MYSURU DISTRICT – 570 003.

…RESPONDENTS

(BY SRI B.N.JAGADEESHA, SPP-I A/W
SMT.RASHMI PATEL, HCGP FOR R-1)

THIS CRL.P IS FILED U/S 482 CR.PC PRAYING TO QUASH THE CHARGE SHEET SUBMITTED BY THE N.R. TRAFFIC P.S., MYSURU THE 1ST RESPONDENT HEREIN AS AGAINST THE PETITIONER/ACCUSED NO. 02 HEREIN ONLY INSOFAR AS IT IS SUBMITTED FOR THE OFFENCE P/U/S 304 PART II OF IPC, 1860 IN RELATION TO CRIME NO.89/2020 REGISTERED BY THEM ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE, MYSURU IN S.C.NO.270/2021 WHICH IS GIVEN HEREIN AT ANNEXURE-A.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.08.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/accused No.2 is before the Court calling in question proceedings in S.C.No.270 of 2021 registered for offence punishable under Section 304 Part-II of the IPC.

2. Facts, in brief, germane, are as follows: -

2.1. The case of the prosecution, ***shorn*** of unnecessary details, is that on 10-12-2020, the minor son of the petitioner, then aged about 14 years and a juvenile in conflict with law, allegedly took for a drive a motor car which had been entrusted to the petitioner by his employer. The drive, unfortunately, culminated in a tragic accident claiming the lives of three persons. On the strength of a complaint lodged by the kith and kin of the deceased, a crime comes to be registered in Crime No.89 of 2020, initially for offences punishable under Sections 279, 304A and 337 of the IPC and Sections 134A, 134B and 187 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short).

2.2. In the course of investigation, permission was sought from the II Additional District and Sessions Judge, Mysuru, to incorporate the offence punishable under Section 304 Part-II of the IPC. Permission being accorded, Section 304 Part-II enters the array of offences alleged in the crime. Investigation thereafter proceeds and culminates in the filing of a charge sheet, in which the petitioner is arraigned as accused No.2 for the offence punishable under Section 304 Part-II of the IPC, apart from offences under Sections 5(1), 180 and 199A of the Act.

2.3. The petitioner, on being so arraigned, files an application seeking discharge in S.C.No.270 of 2021 before the concerned Sessions Court. The fulcrum of the plea for discharge was that, even if the entire charge-sheet material were to be accepted as it stood, the ingredients necessary to constitute an offence under Section 304 Part-II of the IPC were conspicuously absent. The concerned Court, upon hearing the parties, declines to accept the plea and dismisses the application. It is this rejection that drives the petitioner to this Court. The challenge, however, is deliberately confined: the petitioner does not seek obliteration of the entire

prosecution, but restricts his prayer to effacement of the offence punishable under Section 304 Part-II of the IPC.

3. Heard Sri Pallava R., learned counsel appearing for the petitioner, and Sri B.N. Jagadeesha, learned State Public Prosecutor-I appearing for respondent No.1.

4. Sri Pallava R., learned counsel appearing for the petitioner, would contend with considerable vehemence that the unfortunate accident, grave though its consequences undoubtedly are, cannot by itself clothe the petitioner with criminal liability for culpable homicide not amounting to murder. His submission is that the minor son of the petitioner, without the petitioner's knowledge or consent, took the car and drove it in a rash and negligent manner, resulting in the fatal accident. Even assuming the prosecution material to be true in its entirety, it is contended, the essential ingredient of *knowledge* that the act was likely to cause death - indispensable for attracting Section 304 Part-II of the IPC - is wholly wanting *qua* the petitioner. At its highest, the material may make out an offence founded upon rashness or negligence; it cannot be elevated into one of culpable homicide, merely because

the consequences of the accident were tragic. Learned counsel would submit that he does not press the challenge insofar as the other offences are concerned and confines the petition exclusively to the obliteration of the offence under Section 304 Part-II of the IPC.

5.1. Per contra, Sri B.N. Jagadeesha, learned State Public Prosecutor-I, would stoutly defend the impugned order. Taking this Court through the material appended to the petition, the charge-sheet papers and the reasons rendered by the concerned Sessions Court while rejecting the application for discharge, he would contend that the prosecution material presents a picture quite different from the one projected by the petitioner. According to the learned State Public Prosecutor, there is material to indicate that it was the petitioner himself who handed over the keys of the car to his 14-year-old son and permitted him to take the vehicle for a drive. If that circumstance is ultimately established, the petitioner cannot, it is submitted, wash his hands of the consequences, by portraying the episode as an unauthorised adventure of the minor.

5.2. The learned State Public Prosecutor would further submit that the phenomenon of minors being permitted to take the wheel of motor vehicles, with disastrous consequences to innocent road users, is no longer an isolated occurrence. The law, therefore, cannot view with indulgence the conduct of a parent or guardian who knowingly places a motor vehicle in the hands of a child legally incompetent to drive it. In such circumstances, interference at the threshold, by effacing the offence under Section 304 Part-II of the IPC, according to the learned State Public Prosecutor, would amount to putting a premium upon conduct fraught with foreseeable and potentially fatal consequences. He would, therefore, seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. Though the afore-narrated facts form part of the record, the circumstances surrounding the incident merit a somewhat detailed iteration. The petitioner is the father of a minor boy who,

at the relevant point in time, was barely 14 years of age. On 10-12-2020, the minor is alleged to have taken a Volkswagen Vento car bearing registration No.KA-09-ME-6681 for a drive. While proceeding on the Mysuru–Bengaluru Road, the vehicle, allegedly driven in a rash and negligent manner, crashes into a two-wheeler bearing registration No.KA-10-H-9100. The collision proves catastrophic - it claims three lives and leaves one person injured.

8. The second respondent is the complainant. The tragedy that befell the family is indeed profound. Complainant is the father of deceased Usha, the father-in-law of her deceased husband and the grandfather of the two children travelling with them, one of whom also succumbed to the accident while the other sustained injuries. Thus, in one calamitous occurrence, three members of the family lost their lives and another suffered injuries. It is in the aftermath of this unfortunate incident that the second respondent sets the criminal law in motion by registering the complaint on 10-12-2020. The complaint, which forms the genesis of the proceedings now under consideration, reads as follows:

"ಇಂದ:

ಅಣ್ಣೇಗೌಡ ಬಿನ್ ಲೇಟ್ ನಂಜೇಗೌಡ
63 ವರ್ಷ ವಯಸ್ಸು, ಕುರುಬಗೌಡ ಜನಾಂಗ,
ಹರಿಹಂತ ಸೆರಾಮಿಕ್ಸ್‌ನಲ್ಲಿ ಸೆಕ್ಯೂರಿಟಿ ಗಾರ್ಡ್ ಕೆಲಸ,
ಮನೆ ನಂ. 59, ಚಂದ್ರಮೌಳೇಶ್ವರ ದೇವಸ್ಥಾನದ ಬೀದಿ,
ಸಿದ್ದಲಿಂಗಪುರ ಗ್ರಾಮ, ಮೈಸೂರು ತಾ ।। ಮತ್ತು ಜಿಲ್ಲೆ
ಮೊಬೈಲ್ ಸಂಖ್ಯೆ: 6362352239.

ಗೆ
ಠಾಣಾಧಿಕಾರಿಗಳು,
N.R. ಸಂಚಾರ ಠಾಣೆ,
ಮೈಸೂರು ನಗರ.

ವಿಷಯ: ಅಪಘಾತದಲ್ಲಿ ನನ್ನ ಮಗಳು ಉಷಾ 30 ವರ್ಷ, ಅಳಿಯ ರಮೇಶ 40 ವರ್ಷ ಮತ್ತು ಅವರ ಮಗ ಮೋನಿಶ್ 5 ವರ್ಷ ರವರುಗಳು ಮೃತಪಟ್ಟಿರುವ ಬಗ್ಗೆ.

ನಾನು ಮೇಲೆ ತಿಳಿಸಿರುವ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ಅರಿಹಂತ ಸೆರಾಮಿಕ್ಸ್‌ನಲ್ಲಿ ಸೆಕ್ಯೂರಿಟಿ ಗಾರ್ಡ್ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ಈ ದಿನ ದಿನಾಂಕ 10/12/2020 ರಂದು ರಾತ್ರಿ ಸುಮಾರು 10:30 ರ ಸಮಯದಲ್ಲಿ ನಾನು ಡ್ಯೂಟಿಯಲ್ಲಿರಬೇಕಾದರೆ ನನ್ನ ಮಗ ಮಂಜುನಾಥ್ ಫೋನ್ ಮಾಡಿ ಭಾವ ರಮೇಶ, ಉಷಾ ಬೈಕ್‌ನಲ್ಲಿ ಹೋಗುತ್ತಿದ್ದಾಗ ದಂಡಿನ ಮಾರಮ್ಮ ದೇವಸ್ಥಾನ ಮತ್ತು ಪದ್ಮಶ್ರೀ ಕಲ್ಯಾಣ ಮಂಟಪದ ಬಳಿ ಹಳೆ ಮೈಸೂರು-ಬೆಂಗಳೂರು ರಸ್ತೆಯಲ್ಲಿ ಅಕ್ಸಿಡೆಂಟ್ ಆಗಿದೆ ಅಂತೆ ಬನ್ನಿ ಎಂದು ತಿಳಿಸಿದರು. ಕೂಡಲೇ ನಾನು ಆಕ್ಸಿಡೆಂಟ್ ಆಗಿದ್ದ ಜಾಗಕ್ಕೆ ಹೋಗಿ ನೋಡಲಾಗಿ ಅಲ್ಲಿ ಜನರು ಸೇರಿದ್ದು ಸ್ಥಳದಲ್ಲಿ ನನ್ನ ಅಳಿಯನ ಮೋಟಾರ್ ಸೈಕಲ್ ಬಿದ್ದಿದು ಕಾರೊಂದು ರಸ್ತೆಯ ಅಂಚಿನಲ್ಲಿ ಅಡ್ಡಲಾಗಿ ನಿಂತಿತ್ತು. ನಂತರ ಈ ಬಗ್ಗೆ ಸ್ಥಳದಲ್ಲಿದ್ದ ಮೋಹನ್ ಮತ್ತಿತರರನ್ನು ಏನಾಯಿತು ಎಂದು ವಿಚಾರ ಮಾಡಲಾಗಿ ಅವರು ತಿಳಿಸಿದ್ದೇನೆಂದರೆ, ಈ ದಿನ ದಿನಾಂಕ 10/12/2020 ರಂದು ರಾತ್ರಿ ಸುಮಾರು 10:00 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ರಮೇಶ್ ರವರು ಮೋಟಾರ್ ಸೈಕಲ್ ನಂಬರ್ KA 10 H 9100 ಹಿಂಭಾಗದಲ್ಲಿ ಉಷಾ, ಮೋನಿಶ್, ಸಿದ್ದಾರ್ಥ್ ರವರುಗಳನ್ನು ಕೂರಿಸಿಕೊಂಡು ಮೋಟಾರ್ ಸೈಕಲ್‌ನನ್ನು ಹಳೆ ಮೈಸೂರು-ಬೆಂಗಳೂರು ಜೋಡಿ ರಸ್ತೆಯ ಪೂರ್ವ ಭಾಗದ ರಸ್ತೆಯಲ್ಲಿ ಹಳೆ ಟೋಲ್‌ಗೇಟ್ ಕಡೆಯಿಂದ ದಂಡಿನ ಮಾರಮ್ಮ ದೇವಸ್ಥಾನದ ಕಡೆಗೆ ಚಾಲನೆ ಮಾಡಿಕೊಂಡು ಜೆಬಿ ಡೆವಲಪರ್ಸ್‌ನಿಂದ ಸ್ವಲ್ಪ ಮುಂದೆ ಹೋಗುತ್ತಿದ್ದಾಗ ಇದೇ ಸಮಯಕ್ಕೆ ಹಳೆ ಮೈಸೂರು-ಬೆಂಗಳೂರು ಜೋಡಿ ರಸ್ತೆಯ ಪಶ್ಚಿಮ ಭಾಗದ ರಸ್ತೆಯಲ್ಲಿ ದಂಡಿನ ಮಾರಮ್ಮ ದೇವಸ್ಥಾನದ ಕಡೆಯಿಂದ ಕಾರ್ ನಂಬರ್ KA 09 ME 6681 ನ್ನು ಅದರ ಚಾಲಕ ಅತಿ ವೇಗವಾಗಿ ಮತ್ತು ಅಜಾಗರಕತೆಯಿಂದ ಚಾಲನೆ ಮಾಡಿಕೊಂಡು ಬಂದು

ವೇಗವನ್ನು ನಿಯಂತ್ರಿಸಲಾರದೆ ರಸ್ತೆ ವಿಭಜಕಕ್ಕೆ ಡಿಕ್ಕಿ ಮಾಡಿಕೊಂಡು ಪೂರ್ವ ಭಾಗದ ರಸ್ತೆಗೆ ಬಂದು ಮೋಟಾರ್ ಸೈಕಲ್‌ಗೆ ಡಿಕ್ಕಿ ಮಾಡಿದ ರಭಸಕ್ಕೆ ಮೋಟಾರ್ ಸೈಕಲ್ ಸಮೇತ ಮೋಟಾರ್ ಸೈಕಲ್‌ನಲ್ಲಿದ್ದವರು ಉಜ್ಜಿಕೊಂಡು ಹೋಗಿ ಬಿದ್ದ ಪರಿಣಾಮ ರಮೇಶ್ ರವರಿಗೆ ತಲೆಗೆ, ಮೈಕೈ ಕಾಲಿಗೆ ತೀವ್ರು ಪೆಟ್ಟಾಗಿ ರಕ್ತ ಸುರಿದು ಸ್ಥಳದಲ್ಲಿಯೇ ಮೃತಪಟ್ಟಿದ್ದು, ಉಷಾ ಮತ್ತು ಮೋನಿಶ್‌ಗೂ ಸಹ ತಲೆ, ಕುತ್ತಿಗೆ, ಮೈಕೈ ಕಾಲಿಗೆ ತೀವ್ರ ಪೆಟ್ಟಾಗಿ ರಕ್ತ ಸುರಿದು ಸ್ಥಳದಲ್ಲಿಯೇ ಸತ್ತು ಹೋಗಿದ್ದು, ಮಗು ಸಿದ್ಧಾರ್ಥ್‌ಗೆ ತಲೆ, ಮೈಕೈ ಕಾಲಿಗೆ ಪೆಟ್ಟಾಗಿದ್ದು ಚಿಕಿತ್ಸೆಗೆ ಆಸ್ಪತ್ರೆಗೆ ಕಳುಹಿಸಿರುವುದಾಗಿ ತಿಳಿಸಿದರು ಮತ್ತು ಡಿಕ್ಕಿ ಮಾಡಿದ ಕಾರ್ ಚಾಲಕ ಓಡಿ ಹೋದನೆಂದು ತಿಳಿಸಿದರು.

ಆದ್ದರಿಂದ ಈ ಅಪಘಾತಕ್ಕೆ ಕಾರಣನಾದ ಕಾರ್ ನಂಬರ್ KA 09 ME 6681 ರ ಚಾಲಕನನ್ನು ಪತ್ತೆ ಮಾಡಿ ಆತನ ಮೇಲೆ ಕಾನೂನು ರೀತ್ಯ ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ,
ಅಣ್ಣೇಗೌಡ.''

The complaint narrates, in vivid and painful detail, the manner in which the accident unfolded and the devastating consequence it visited upon the complainant and his family. What began as a drive by a 14-year-old boy ended in a catastrophe, virtually wiping out a family and leaving the complainant to bear the immeasurable grief of losing his daughter, son-in-law and grandchild in one fell swoop. The enormity of the tragedy is undeniable; but the gravity of the consequence, by itself, cannot determine the gravity of the offence. Criminal liability must necessarily be tested on the ingredients of the offence alleged and the material that supports them.

9. On the complaint so registered, Crime No.89 of 2020 initially comes to be registered for offences punishable under Sections 279, 304A and 337 of the IPC and Sections 134(a), 134(b) and 187 of the Act. Section 304 Part-II of the IPC, which brings with it the graver allegation of culpable homicide not amounting to murder, enters the crime at a later stage. The Police thereafter conduct investigation and file their final report/charge sheet, arraigning the petitioner as accused No.2. It is the addition of Section 304 Part-II *qua* the petitioner that forms the kernel of the controversy in the case at hand. The summary of the charge sheet, as obtaining under Column No.17 reads as follows:

> "17. Brief facts of the case
>
> ಈ ದೋಷಾರೋಪಣಾ ಪತ್ರದ ಅಂಕಣ-12 ರಲ್ಲಿ ಕಂಡ 2ನೇ ಆರೋಪಿಯು ಕೆ.ಪಿ.ಆರ್ ಕಾರ್ ಪ್ರೈ. ಲಿಮಿಟೆಡ್ ವೋಕ್ಸ್ ವ್ಯಾಗನ್ ಷೋ ರೂಂ ನಿಂದ ತನಗೆ ಓಡಾಡಲು ನೀಡಿದ್ದ ವೋಕ್ಸ್, ವ್ಯಗನ್ ವೆಂಟೋ ಕಾರ್ ನಂಬರ್ ಕೆಎ-09-ಎಂ.ಇ-6681 ನ್ನು ತಮ್ಮ ಮಗ ಅಪ್ರಾಪ್ತ ಬಾಲಕನಿಗೆ ಮೊದ-ಮೊದಲು ಕಾರನ್ನು ಗೇಟ್ ಒಳಭಾಗದ ಪಾರ್ಕಿಂಗ್ ಜಾಗದಿಂದ ಗೇಟ್ ಹೊರಕ್ಕೆ ತೆಗೆಯಲು ಹಾಗೂ ಗೇಟ್ ಹೊರಭಾಗದಿಂದ ಗೇಟ್ ಒಳಭಾಗದ ಪಾರ್ಕಿಂಗ್ ಜಾಗಕ್ಕೆ ನಿಲ್ಲಿಸಲು ನೀಡುತ್ತಿದ್ದು ಮತ್ತು ಹೇಳಿಕೊಡುತ್ತಿದ್ದು, ಇದರ ಜೊತೆಗೆ ಅಪ್ರಾಪ್ತ ಬಾಲಕನು ಕಾರನ್ನು ಮನೆಯ ಸುತ್ತಮುತ್ತ & ಅಕ್ಕಪಕ್ಕದ ರಸ್ತೆಗಳಲ್ಲಿ ಓಡಿಸುವ ಹವ್ಯಾಸ ಬೆಳೆಸಿಕೊಂಡಿದ್ದರೂ ಸಹ 02ನೇ ಆರೋಪಿಯು ಅದನ್ನು ತಡೆಯದೇ ಅಪ್ರಾಪ್ತ ಬಾಲಕನು ಕಾರನ್ನು ಚಾಲನೆ ಮಾಡಲು ಬರುವುದಿಲ್ಲ ಹಾಗೂ ಅಪ್ರಾಪ್ತ ಬಾಲಕನಿಗೆ ಕಾರ್ ಚಾಲನೆ ಮಾಡಲು ನೀಡಿದರೆ ಮಾನವ ಜೀವಕ್ಕೆ ಹಾನಿಯುಂಟಾಗುತ್ತದೆ ಎಂದು ಗೊತ್ತಿದ್ದರೂ ಸಹ ಚಾಲನಾ ಪತ್ರ ಹೊಂದಿಲ್ಲದ ತಮ್ಮ ಮಗ ಅಪ್ರಾಪ್ತ ಬಾಲಕನಿಗೆ ಕಾರ್ ಚಾಲನೆ ಮಾಡಲು ಪ್ರೋತ್ಸಾಹಿಸುತ್ತಿದ್ದ ಮೇರೆಗೆ J-1, ಕಾನೂನು ಸಂಘರ್ಷಕ್ಕೊಳಗಾದ ಬಾಲಕನು ಮೇಲ್ಕಂಡ ಕಾರನ್ನು ದಿನಾಂಕ:10/12/2020 ರಂದು ತೆಗೆದುಕೊಂಡು ಹೋಗಿ ರಾತ್ರಿ ಸುಮಾರು 10-00 ಗಂಟೆಯಲ್ಲಿ ನರಸಿಂಹರಾಜ ಸಂಚಾರ ಠಾಣಾ ವ್ಯಾಪ್ತಿಯ ಹಳೇ ಮೈಸೂರು ಬೆಂಗಳೂರು ಜೋಡಿ ರಸ್ತೆಯ ಪಶ್ಚಿಮಭಾಗದ

ರಸ್ತೆಯಲ್ಲಿ ದಂಡಿನ ಮಾರಮ್ಮ ದೇವಸ್ಥಾನದ ಕಡೆಯಿಂದ ಹಳೇ ಟೋಲ್ ಗೇಟ್ ಕಡೆಗೆ ಅತಿವೇಗವಾಗಿ ಮತ್ತು ಅಜಾಗರೂಕತೆಯಿಂದ ಚಾಲನೆ ಮಾಡಿಕೊಂಡು ಹೋಗಿ ಜೆಬಿ ಡೆವಲಪರ್ & ಬಿಲ್ಡರ್ಸ್ ಕಛೇರಿ ಬಳಿ ವೇಗವನ್ನು ನಿಯಂತ್ರಿಸಲಾರದೇ ರಸ್ತೆಯ ಮಧ್ಯಭಾಗದ ರಸ್ತೆ ವಿಭಜಕಕ್ಕೆ ಡಿಕ್ಕಿಮಾಡಿಕೊಂಡು ಪೂರ್ವಭಾಗದ ರಸ್ತೆಗೆ ಹಾರಿ ಹೋಗಿ ಪೂರ್ವಭಾಗದ ರಸ್ತೆಯಲ್ಲಿ ರಮೇಶ್ (ಮೃತ) ರವರು ಹಿಂಬದಿ ತನ್ನ ಪತ್ನಿ ಉಪಾ(ಮೃತೆ), ಮಕ್ಕಳಾದ ಕು:ಮೋನೀಶ್ (ಮೃತ), ಕು:ಸಿದ್ಧಾರ್ಥ್ (ಗಾಯಾಳು) ರವರನ್ನು ಕೂರಿಸಿಕೊಂಡು ಮೈಸೂರು ಕಡೆಗೆ ಬರುತ್ತಿದ್ದ ಹಿರೋಹೊಂಡಾ ಸ್ಪ್ಲೆಂಡರ್ ಪ್ಲಸ್ ಮೋಟಾರ್ ಸೈಕಲ್ ನಂಬರ್ ಕೆಎ-10-ಹೆಚ್-9100 ಗೆ ಡಿಕ್ಕಿಮಾಡಿದ ರಭಸಕ್ಕೆ ರಮೇಶ್, ಶ್ರೀಮತಿ ಉಷಾ ಮತ್ತು ಕು: ಮೋನಿಷ್ ಮೂವರೂ ಮೃತಪಟ್ಟಿರುವುದು ಮತ್ತು ಕು: ಸಿದ್ಧಾರ್ಥ್ ಗೆ ಸಾಮಾನ್ಯ ಸ್ವರೂಪದ ಗಾಯವಾಗಿರುವುದು ಹಾಗೂ 02ನೇ ಆರೋಪಿಯು ಅಪಘಾತ ಸ್ಥಳಕ್ಕೆ ಹೋದಾಗ ಸಾಕ್ಷಿ-02 & 3 ಹಾಗೂ ಸಾರ್ವಜನಿಕರು ಗಾಯಾಳುಗಳನ್ನು ಆಸ್ಪತ್ರೆಗೆ ಸೇರಿಸಲು ಕೋರಿಕೊಂಡರೂ ಸಹ ಗಾಯಾಳುಗಳಿಗೆ ಚಿಕಿತ್ಸೆ ಕೊಡಿಸದೇ, ಪೊಲೀಸರಿಗೆ ಅಪಘಾತದ ಮಾಹಿತಿಯನ್ನು ನೀಡದೇ ಅಪಘಾತ ಸ್ಥಳದಿಂದ ತಮ್ಮ ಮಗ ಅಪ್ರಾಪ್ತ ಬಾಲಕನನ್ನು ಕರೆದುಕೊಂಡು ಹೊರಟು ಹೋಗಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುವುದರಿಂದ 2ನೇ ಆರೋಪಿಯ ವಿರುದ್ಧ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ರೀತ್ಯಾ ದೋಷಾರೋಪಣಾ ಪತ್ರವನ್ನು ಸಲ್ಲಿಸಲಾಗಿದೆ.

(J-1, ಕಾನೂನು ಸಂಘರ್ಷಕ್ಕೊಳಗಾದ ಬಾಲಕ (2ನೇ ಆರೋಪಿಯ ಮಗ) ನ ವಿರುದ್ಧ ದೋಷಾರೋಪಣಾ ಪತ್ರವನ್ನು ಘನ-ಭಾಲ ನ್ಯಾಯ ಮಂಡಳಿಗೆ ಪ್ರತ್ಯೇಕವಾಗಿ ಸಲ್ಲಿಸಲಾಗಿದೆ."

The filing of the charge sheet brings the petitioner before the concerned Sessions Court with an application seeking discharge, though his challenge is confined to the graver offence punishable under Section 304 Part-II of the IPC. His plea, in essence, is that even if the entire charge sheet material is accepted at its face value, it does not disclose the ingredients necessary to fasten upon him the offence of culpable homicide not amounting to murder under Section 304 Part-II of the IPC. The prayer in the application under Section 227 of the Cr.P.C., reads as follows:

> "Hence A2 deserves to be discharged from offences under Section 304 of IPC, Section 5 r/w 180 and 199A of M.V. Act.
>
> For the above said reasons, it is humbly prayed that this Hon'ble Court be pleased to discharge the A2 from offences under Section 304 of IPC and Section 5 r/w 180 and Section 199A of M.V. Act in the interest of justice."

The concerned Court rejects the discharge application on the score that there is no ground made out seeking his discharge.

10. The issue now would be, whether the petitioner can be tried for offence punishable under Section 304 Part-II of the IPC. Section 304 Part-II of the IPC reads as follows:

> "304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,
>
> or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

The ingredients of Section 304 Part-II of the IPC are well delineated. The act complained of must be accompanied by the

knowledge that it is likely to cause death, *albeit*, without any *intention* either to cause death or to cause such bodily injury as is likely to result in death. Knowledge, therefore, forms the fulcrum of the offence under Part-II; absence of such knowledge, the provision cannot be pressed into service merely because the consequence of the act has been fatal.

11. The interpretation of Section 304 Part-II of the IPC need not detain this Court for long, nor is it necessary to embark upon an elaborate excursion into its jurisprudential contours, as the provision and its ingredients have received authoritative exposition at the hands of the Apex Court on more than one occasion.

JUDICIAL LANDSCAPE:

11.1. The Apex Court in **YUVRAJ LAXMILAL KANTHER v. STATE OF MAHARASHTRA**[1] has held as follows:

"…. …. ….

> **12.** We have noted above that the appellants have been charged for committing offence under Section 304 Part II IPC read with Section 34 IPC. Since Section 34 IPC covers common intention, the substantive charge against the appellants is under Section 304 Part II IPC which reads as under:

[1] **2025 SCC OnLine SC 520**

Punishment for culpable homicide not amounting to murder -

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to ten years or with fine or with both, if the act is done with the knowledge that it is likely to cause death; but without any intention to cause death or to cause such bodily injury as is likely to cause death.

12.1. The ingredients constituting an offence under Section 304 Part II IPC are as follows:

(i) he must commit culpable homicide not amounting to murder;

(ii) the act must be done with the knowledge that it is likely to cause death;

(iii) but such act is done without any intention to cause death or to cause such bodily injury as is likely to cause death.

12.2. Therefore, the first important expression is 'culpable homicide not amounting to murder'. Culpable homicide is defined in Section 299 IPC. It says that whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

12.3. All culpable homicides are murders except in the cases excepted under Section 300 IPC. Thus, except the cases specifically exempted under Section 300 IPC, all other acts within the meaning of Section 299 IPC would amount to committing the offence of culpable homicide. However, what is important to note is that for committing the offence of culpable homicide, a positive act must be done by the doer with the

> intention that such act would cause death or cause such bodily injury as is likely to cause death or he having the knowledge that by such an act, death may be caused. What, therefore, is significant is that the doer of the act must have the intention of causing death or the intention of causing such bodily injury as is likely to cause death or has the knowledge that by doing such an act he is likely to cause death. Therefore, to commit the offence of culpable homicide, intention or knowledge is of crucial importance.
>
> **12.4. Coming back to Section 304 Part II IPC, we find that the said section would be attracted if anyone commits culpable homicide not amounting to murder 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. Therefore, the requirement of Section 304 Part II IPC is that the doer must have the knowledge that the act performed is likely to cause death or to cause such bodily injury as is likely to cause death but without any intention to cause death. Thus, the basic ingredient of Section 304 Part II IPC is presence of knowledge and absence of intention. The doer must have the knowledge that the act performed by him would likely cause death etc but there should not be any intention to cause death."**

The Apex Court holds that the accused were not persons physically performing the ultimate act which resulted in death. The allegations were essentially that they failed to provide safety equipment to employees working in a dangerous situation. The Apex Court holds that there was no prima facie case under Section 304 Part-II as there was no material establishing requisite knowledge.

11.2. The Apex Court, a little earlier, in **SHANTIBHAI J. VAGHELA v. STATE OF GUJARAT**[2] interpreting Section 304 Part-II holds that commission of offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. To attract the ingredients of the said offence, something more positive than a mere omission, lapse or negligence must be alleged against the accused. The Apex Court has held as follows:

"…. …. ….

> **25. Commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. Allegations of not carrying out a prompt search of the missing children; of delay in the lodging of formal complaint with the police and failure to take adequate measures to guard the access from the ashram to the river, which are the principal allegations made in the FIR, cannot make out a case of culpable homicide not amounting to murder punishable under Section 304 IPC. To attract the ingredients of the said offence something more positive than a mere omission, lapse or negligence on the part of the named accused will have to be present. Such statements are conspicuously absent in the FIR filed in the present case."**

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[2] **(2012) 13 SCC 231**

11.3. The Apex Court, again, in **ALISTER ANTHONY PAREIRA v. STATE OF MAHARASHTRA**[3] has held as follows:

"…. …. ….

> **40. The question is whether indictment of an accused under Section 304 Part II and Section 338 IPC can coexist in a case of single rash or negligent act. We think it can. We do not think that the two charges are mutually destructive. If the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused, then not only that the punishment is for the act but also for the resulting homicide and a case may fall within Section 299 or Section 300 depending upon the mental state of the accused viz. as to whether the act was done with one kind of knowledge or the other or the intention. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known.**
>
> **41.** Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. As a matter of law—in view of the provisions of IPC—the cases which fall within the last clause of Section 299 but not within clause "Fourthly" of Section 300 may cover the cases of rash or negligent act done with the knowledge of the likelihood of its dangerous consequences and may entail punishment under Section 304 Part II IPC. Section 304-A IPC takes out of its ambit

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[3] **(2012) 2 SCC 648**

the cases of death of any person by doing any rash or negligent act amounting to culpable homicide of either description.

42. A person, responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the knowledge of the consequence and may be fastened with culpability of homicide not amounting to murder and punishable under Section 304 Part II IPC. There is no incongruity, if simultaneously with the offence under Section 304 Part II, a person who has done an act so rashly or negligently endangering human life or the personal safety of the others and causes grievous hurt to any person is tried for the offence under Section 338 IPC.

43. In view of the above, in our opinion there is no impediment in law for an offender being charged for the offence under Section 304 Part II IPC and also under Sections 337 and 338 IPC. The two charges under Section 304 Part II IPC and Section 338 IPC can legally coexist in a case of single rash or negligent act where a rash or negligent act is done with the knowledge of likelihood of its dangerous consequences.

44. By charging the appellant for the offence under Section 304 Part II IPC and Section 338 IPC—which is legally permissible—no prejudice has been caused to him. The appellant was made fully aware of the charges against him and there is no failure of justice. We are, therefore, unable to accept the submission of Mr U.U. Lalit that by charging the appellant for the offences under Section 304 Part II IPC and Section 338 IPC for a rash or negligent act resulting in injuries to eight persons and at the same time committed with the knowledge resulting in death of seven persons, the appellant has been asked to face a legally impermissible course.

45. In *Prabhakaran* v. *State of Kerala* [(2007) 14 SCC 269: (2009) 1 SCC (Cri) 873] this Court was concerned with the appeal filed by a convict who was found guilty of the offence punishable under Section 304 Part II IPC. In that case, the bus driven by the convict ran over a boy aged 10 years. The prosecution case was that the bus was being driven by the appellant therein at enormous speed and although the

passengers had cautioned the driver to stop as they had seen children crossing the road in a queue, the driver ran over the student on his head. It was alleged that the driver had real intention to cause death of persons to whom harm may be caused on the bus hitting them. He was charged with offence punishable under Section 302 IPC. The trial court found that no intention had been proved in the case but at the same time the accused acted with the knowledge that it was likely to cause death, and, therefore, convicted the accused of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced him to undergo rigorous imprisonment for five years and pay a fine of Rs 15,000 with a default sentence of imprisonment for three years. The High Court dismissed the appeal and the matter reached this Court.

46. While observing that Section 304-A speaks of causing death by negligence and applies to rash and negligent acts and does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death and that Section 304-A only applies to cases in which without any such intention or knowledge death is caused by a rash and negligent act, on the factual scenario of the case, it was held in *Prabhakaran case* [(2007) 14 SCC 269 : (2009) 1 SCC (Cri) 873] that the appropriate conviction would be under Section 304-A IPC and not Section 304 Part II IPC. *Prabhakaran* [(2007) 14 SCC 269 : (2009) 1 SCC (Cri) 873] does not say in absolute terms that in no case of an automobile accident that results in death of a person due to rash and negligent act of the driver, the conviction can be maintained for the offence under Section 304 Part II IPC even if such act (rash or negligent) was done with the knowledge that by such act of his, death was likely to be caused. *Prabhakaran* [(2007) 14 SCC 269: (2009) 1 SCC (Cri) 873] turned on its own facts.

47. Each case obviously has to be decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 304-A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II IPC may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrongdoer to cause death, offence may be punishable under Section 302 IPC.

> … … …
>
> **78.** We have also carefully considered the evidence let in by the prosecution—the substance of which has been referred to above—and we find no justifiable ground to take a view different from that of the High Court. We agree with the conclusions of the High Court and have no hesitation in holding that the evidence and materials on record prove beyond reasonable doubt that the appellant can be attributed with knowledge that his act of driving the vehicle at a high speed in a rash or negligent manner was dangerous enough and he knew that one result would very likely be that people who were asleep on the pavement may be hit, should the vehicle go out of control.
>
> **79.** There is a presumption that a man knows the natural and likely consequences of his acts. Moreover, an act does not become involuntary act simply because its consequences were unforeseen. The cases of negligence or of rashness or dangerous driving do not eliminate the act being voluntary. In the present case, the essential ingredients of Section 304 Part II IPC have been successfully established by the prosecution against the appellant. The infirmities pointed out by Mr U.U. Lalit, learned Senior Counsel for the appellant, which have been noticed above are not substantial and in no way affect the legality of the trial and the conviction of the appellant under Section 304 Part II IPC. We uphold the view of the High Court being consistent with the evidence on record and law."

The Apex Court interpreting Section 304 Part-II holding it to be distinguished from Section 304A and 338 of the IPC did not choose to interfere with the offence alleged under Section 304 Part-II for the reason that the accused was a driver himself.

11.4. The Apex Court in **STATE v. SANJEEV NANDA**[4] holds as follows:

"…. …. ….

"39. For our own benefit it is appropriate to reproduce Section 304 IPC, which reads thus:

> **"304.*Punishment for culpable homicide not amounting to murder*.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;**
>
> **or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."**

A critical and microscopic analysis thereof shows that once knowledge that it is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or with fine or with both.

40. Now, we have to consider if it is a fit case where conviction should be altered to Section 304 Part II IPC and sentence awarded should be enhanced.

41. We are of the considered view that looking to the nature and manner in which the accident had taken place, it can safely be held that the respondent had no intention to cause

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[4] **(2012) 8 SCC 450**

death but certainly had the knowledge that his act may result in death.

42. Thus, looking to the matter from all angles, we have no doubt in our mind that knowledge can still be attributed to accused Sanjeev that his act might cause such bodily injuries which may, in ordinary course of nature, be sufficient to cause death but certainly he did not have any intention to cause death. He was not driving the vehicle with that intention. There is nothing to prove that he knew that a group of persons was standing on the road he was going to pass through. If that be so, there cannot be an intention to cause death or such bodily injury as is likely to cause death. Thus, in our opinion, he had committed an offence under Section 304 Part II IPC. We accordingly hold **so.**

... **...** **...**

104. First we will examine the scope of Section 304-A IPC which reads as follows:

> "**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."
>
> On reading the abovementioned provision, the following requirements must be satisfied before applying this section:
>
> (*i*) Death must have been caused by the accused;
> (*ii*) Death caused by rash or negligent act;
> (*iii*) Rash and negligent act must not amount to culpable homicide.

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 not amounting to murder under Section 299 or murder under Section 300. Section 304-A excludes all the ingredients of Section 299 or Section 300.

105. The abovementioned section came up for consideration in *HaidaraliKalubhai* [(1976) 1 SCC 889 : 1976

SCC (Cri) 211] wherein this Court held as follows: (SCC p. 891, para 4)

> "*4*. 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 IPC or murder under Section 300 IPC. If a person wilfully drives a motor vehicle in the midst of a crowd and thereby causes death to some persons, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Each case will, therefore, depend upon the particular facts established against the accused."

106. Before elaborating and examining the above principle laid down by this Court in *Haidarali case* [(1976) 1 SCC 889 : 1976 SCC (Cri) 211] , we will refer to Sections 299, 300 and 304 IPC:

> ***Section 299***
>
> A person commits culpable homicide if the act by which the death is caused is done
>
> ***
>
> (*c*) with the knowledge that he is likely to cause death.
>
> ***Section 300***
>
> Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done
>
> ***
>
> ***Fourthly***.— with the knowledge that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.
>
> "**304.*Punishment for culpable homicide not amounting to murder***.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years,

> and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;
>
> or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

107. Section 299 IPC defines culpable homicide as an act of causing death (*i*) with the intention of causing death; (*ii*) with the intention of causing some bodily injury as is likely to cause death; and (*iii*) with the knowledge that such act is likely to cause death. The first and second clauses of the section refer to intention apart from knowledge and the third clause refers to knowledge apart from intention. "Intention" and "knowledge" postulate the existence of positive mental attitude. The expression "knowledge" referred to in Section 299 and Section 300 is the personal knowledge of the person who does the act. To make out an offence punishable under Section 304 Part II IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew such act of his is likely to cause death.

108. Section 304-A, as already indicated, 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 not amounting to murder under Section 299 or murder under Section 300. The scope of the abovementioned provisions came up for consideration before this Court in *Naresh Giri* v. *State of M.P.* [(2008) 1 SCC 791 : (2008) 1 SCC (Cri) 324] wherein this Court held as follows: (SCC p. 794, para 7)

> "*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 probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly

> the cause of death of another person. Negligence and rashness are essential elements under Section 304-A."

109. In a recent judgment, in *Alister Anthony Pareira* [(2012) 2 SCC 648 : (2012) 1 SCC (Cri) 953 : (2012) 1 SCC (Civ) 848] , this Court after surveying a large number of judgments on the scope of Sections 304-A and 304 Part II IPC, came to the conclusion that in a case of drunken driving resulting in the death of seven persons and causing injury to eight persons, the scope of Sections 299, 300 and 304 Parts I and II IPC stated to be as follows: (SCC p. 665, para 47)

> "*47*. Each case obviously has to be decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 304-A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II IPC may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrongdoer to cause death, offence may be punishable under Section 302 IPC."

110. On facts, the Court concluded as follows: (*Alister Anthony Pareira case* [(2012) 2 SCC 648: (2012) 1 SCC (Cri) 953: (2012) 1 SCC (Civ) 848] , SCC p. 679, para 97)

> "*97*. The facts and circumstances of the case which have been proved by the prosecution in bringing home the guilt of the accused under Section 304 Part II IPC undoubtedly show a despicable aggravated offence warranting punishment proportionate to the crime. Seven precious human lives were lost by the act of the accused. For an offence like this which has been proved against the appellant, sentence of three years awarded by the High Court is too meagre and not adequate but since no appeal has been preferred by the State, we refrain from considering the matter for enhancement. By letting the appellant away on the sentence already undergone i.e. two months in a case like this, in our view, would be travesty of justice and highly unjust, unfair, improper and disproportionate to the gravity of crime. It is true that the appellant has paid compensation of Rs 8,50,000 but no amount of compensation could relieve the families of victims from

> the constant agony. As a matter of fact, the High Court had been quite considerate and lenient in awarding to the appellant sentence of three years for an offence under Section 304 Part II IPC where seven persons were killed."

111. In *Jagriti Devi* v. *State of H.P.* [(2009) 14 SCC 771 : (2010) 2 SCC (Cri) 245] a Bench of this Court held that it is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

112. In one of the earlier decisions of this Court in *State of A.P.* v. *RayavarapuPunnayya* [(1976) 4 SCC 382: 1976 SCC (Cri) 659] , this Court succinctly examined the distinction between Section 299 and Section 300 IPC and in para 12 of the judgment held as follows: (SCC p. 386)

> "*12*. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally, 'culpable homicide' *sans* 'special characteristics of murder', is 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The *first* is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The *second* may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

Referring to para 14 of that judgment, the Court opined that the difference between clause (*b*) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. The word "likely" in clause (*b*)

of Section 299 conveys the sense of "probable" as distinguished from a mere possibility. The words "bodily injury … sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury having regard to the ordinary course of nature.

113. Ultimately, the Court concluded as follows: (*RayavarapuPunnayya case* [(1976) 4 SCC 382: 1976 SCC (Cri) 659], SCC pp. 388-89, para 21)

> "*21*. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the *first* or the *second* part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes, within any of the exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of Section 304 of the Penal Code."

114. The principle mentioned by this Court in *Alister Anthony Pareira* [(2012) 2 SCC 648 : (2012) 1 SCC (Cri) 953 : (2012) 1 SCC (Civ) 848] indicates that the person must be presumed to have had the knowledge that, his act of driving the vehicle without a licence in a high speed after consuming liquor beyond the permissible limit, is likely or sufficient in the

> ordinary course of nature to cause death of the pedestrians on the road. In our view, *Alister Anthony Pareira* [(2012) 2 SCC 648: (2012) 1 SCC (Cri) 953: (2012) 1 SCC (Civ) 848] judgment calls for no reconsideration. Assuming that Shri Ram Jethmalani is right in contending that while he was driving the vehicle in a drunken state, he had no intention or knowledge that his action was likely to cause death of six human beings, in our view, at least, immediately after having hit so many human beings and the bodies scattered around, he had the knowledge that his action was likely to cause death of so many human beings, lying on the road unattended. To say, still he had no knowledge about his action is too childish which no reasonable man can accept as worthy of consideration. So far as this case is concerned, it has been brought out in evidence that the accused was in an inebriated state, after consuming excessive alcohol, he was driving the vehicle without licence, in a rash and negligent manner in a high speed which resulted in the death of six persons. **The accused had sufficient knowledge that his action was likely to cause death and such an action would, in the facts and circumstances of this case, fall under Section 304 Part II IPC and the trial court has rightly held so and the High Court has committed an error in converting the offence to Section 304-A IPC."**

Here again Sanjeev Nanda, the accused was the driver himself.

11.5. The Apex Court, earlier, in **JAGRITI DEVI v. STATE OF HIMACHAL PRADESH**[5] has held as follows:

> "…. …. ….
>
> **34. That being the position, we are of the considered view that the present case cannot be said to be a case under Section 302 IPC but it is a case falling under Section 304 Part II IPC. It is trite law that Section 304 Part II comes into play when the death is caused by**

[5] **(2009) 14 SCC 771**

doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death."

11.6. The High Court of Delhi in **MASTER M v. STATE OF NCT OF DELHI**[6] holds as follows:

"…. …. ….

41. Since the principal submission of the Petitioner is that, even accepting the prosecution case in its entirety, the essential ingredient of "*knowledge*" as contemplated under Section 299 IPC is not made out, it would be apposite to understand the relevant legal provisions of the IPC, which are reproduced as under:

> ***"Section 304 : Punishment for culpable homicide not amounting to murder.—Whoever, commits culpable homicide not amounting to murder shall be punished with (imprisonment of life), or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.***
>
> ***Section 304A : Causing death by negligence.—*** *Whoever causes the death of any person by doing* ***any rash or negligence 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.*

[6] **2026 SCC OnLine Del.1713**

> ***Section 299 :Culpable homicide.—****Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the* ***knowledge*** ***that he is likely by such act to cause death****, commits the offence of culpable homicide."*

42. A bare perusal of the above sections reflects that the distinction between Section 304 Part II and Section 304A IPC lies in the *mental element* accompanying the act. While Section 304A contemplates *death caused by rash or negligent conduct*, Section 304 Part II is attracted where the act is done *with the knowledge that it is likely to cause death*, though *without any intention* to cause death. "*Knowledge*" in this context denotes an awareness of the likelihood of fatal consequences arising from the act committed. Such knowledge is ordinarily inferred from the nature of the act, the surrounding circumstances, and the degree of risk inherent in the conduct.

43. The Supreme Court, in *Mahadev Prasad Kaushik* (supra), while highlighting the distinction between Section 299, 304 A and 304 IPC, opined as under:

> ***"20. The question then is as regards issuance of summons under Section 304 IPC. Section 304 reads thus:***
>
> ***"304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."***

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. The first part applies where the accused causes bodily injury to the victim with intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part II, on the other hand, comes into play when death is caused by doing an act with 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.

21. 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."

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."

22. Before Section 304 can be invoked, the following ingredients must be satisfied:

(i) the death of the person must have been caused;

(ii) such death must have been caused by the act of the accused by causing bodily injury;

(iii) there must be an intention on the part of the accused:

(a) to cause death; or

(b) to cause such bodily injury which is likely to cause death (Part I);

(iv) there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II).

23. Section 304-A was inserted by the Penal Code (Amendment) Act, 1870 (Act 27 of 1870) and reads thus:

"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."

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 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.

24. There is thus distinction between Section 304 and Section 304-A. Section 304-A 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 304-A 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 304-A 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.

25. In **Empress of India *v.*Idu Beg** ***[1881 SCC OnLine All 103 : ILR (1881) 3 All 776] Straight, J. made the following pertinent observations which have been quoted with approval by various courts including this Court: (ILR p. 780)***

"... 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."

26. 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.

27. The learned counsel for the appellant-accused submitted that by no stretch of

> ***imagination, can it be said that the appellant while administering injections to deceased Buddha Ram is said to have committed an offence punishable under Section 304 IPC. It can never be said that the death of Buddha Ram had been caused by the appellant by doing the act of giving injections with intention to cause his death or to cause such bodily injury as is likely to cause death. Likewise, it is impossible to think that the purported act has been done by the appellant-accused with the knowledge that in all probability, it would result into the death of Buddha Ram."***

(Emphasis supplied)

44. Hence, the above judgment, crystalized the conceptual distinction between the mental elements of *intention*, *knowledge*, *rashness* and *negligence* in the context of Sections 299, 304 and 304A IPC. While *intention and knowledge* constitute the mental elements for culpable homicide, and *rashness* constitutes the mental element for 304 A. It is important to note that the concept of "*knowledge*" appears both in the concept of *criminal rashness* under Section 304A as well as in Section 304 Part II of the IPC, *however, the degree and nature of such knowledge is fundamentally different*. In cases of *criminal rashness*, the accused is aware that his act is dangerous and may cause fatal injury *i*.e. *knowledge that consequence may follow*, yet he proceeds with recklessness or indifference to consequences. **However, for attracting Section 304 Part II, *the knowledge required is of a higher degree, namely the awareness that the act is likely to cause death in all probability*. Thus, while rashness involves knowledge of risk of fatal injury coupled with reckless disregard, Section 304 Part II requires conscious awareness of the likelihood of death as a probable consequence of the act. *The distinction therefore lies not merely in the presence of knowledge, but in the degree of probability of death contemplated by the accused.* Hence only when, intention or knowledge is the motivating force, the offence would fall within the ambit of Section 304 Part II.**

45. Similar view has been echoed by the Supreme Court in the case of *Prabhakaran* (supra). The case centres around a

motor vehicle accident caused by the accused bus driver, who ran his bus over a 10-year-old boy. Initially, considering that the bus driver had ignored the warnings of the pedestrians and the passengers cautioning him to not drive the bus recklessly (thereby implying that he had *knowledge* that death is likely to be caused), he was convicted under Section 304 Part II by the learned trial court as well as the High Court. However, while allowing the appeal of the accused and convicting him under the Section 304 A IPC, the Supreme Court not only delineated the boundary between Sections 304 Part II and 304 A but also explicated the distinction between *criminal rashness* and *criminal negligence* within the framework of Section 304A. On a detailed evaluation of the evidence on record, it was held that there was no evidence to suggest that the accused had the *knowledge that his act was likely to cause death*, thereby excluding the application of Section 304 Part II. It was re-iterated that *criminal rashness* connotes an act done with the consciousness of a risk that evil consequences may follow, yet with the hope that they will not, whereas *criminal negligence* implies a breach of duty to take care, marked by a failure to exercise reasonable and proper caution expected in the circumstances. Both concepts fall within the ambit of Section 304A when death is caused *without intention or knowledge*. The relevant extract is reproduced as under:

> ***"5. Section 304-A speaks of causing death by negligence. This section applies to rash and negligent acts and does not apply to cases where death has been voluntarily caused. This section obviously does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death. It only applies to cases in which without any such intention or knowledge death is caused by what is described as a rash and negligent act.***
>
> ***6. A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately that the***

mischievous or illegal consequences may fall, but with a hope that they will not. *Lord Atkin in* Andrews *v.* Director of Public Prosecutions *[[1937] A.C. 576 : [1937] 2 All ER 552] AC at p. 583 observed as under: (All ER p. 556 C-E)*

"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. Probably of all the epithets that can be applied 'reckless' most nearly covers the case. ***It is difficult to visualise 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 allembracing, 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****."*

7. *"7. Section 304-A applies to cases where there is no intention to cause death and* ***no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person.*** *Negligence and rashness are essential elements under Section 304-A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case.*

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.

> *8.* ***As noted above, 'rashness' consists in hazarding a dangerous or wanton act with <u>the knowledge</u> that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences.*** *Criminal negligence on the other hand, 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.*
>
> *9. The distinction has been very aptly pointed out by Holloway, J. in these words:*
>
> *'Culpable rashness is acting with the consciousness that the mischievous and* ***<u>illegal consequences may follow, but with the hope that they will not,</u> and often with the belief that the actor has taken sufficient precautions to prevent their happening.*** *The imputability arises from acting despite the consciousness (luxuria). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection.' (See Nidamarti Nagabhushanam, In re [7 Mad HCR 119], Mad HCR pp. 119-20.) Xxx xxx xxx*
>
> ***8. <u>When the factual scenario of the present case is analysed, it is crystal clear that the appropriate conviction would be under Section 304-A IPC and not Section 304 Part II IPC.</u>*** *Conviction is accordingly altered. The maximum sentence which can be imposed for offence punishable under Section 304-A is two years with fine or with both. The custodial sentence, therefore, is reduced to the maximum i.e. two years."*
>
> *(emphasis supplied)*

46. Crucially, it was underscored that even a high degree of rashness or negligence does not elevate the offence to Section 304 Part II unless it is accompanied by the *requisite knowledge of the likelihood of death*, which remains the decisive distinguishing element. Accordingly, in the absence of such

knowledge, the conviction was altered from Section 304 Part II to Section 304A IPC.

47. Similar observations have been made in the judgment passed by a co-ordinate Bench of the High Court of Rajasthan, in the judgment of *Abul Kalam Musalman* (supra), and the judgment passed by the Supreme Court in the case of *Yuvraj Laxmilal Kanther* (supra).

48. Hence, the general trend was that most road accidents resulting in death were prosecuted under Section 304A IPC unless there was a clear "*intention*" to cause death or "*knowledge"* of death as a consequence, decipherable from the evidence.

... **...** **...**

61. The determination of the existence of mental elements such as "*intention*" or "*knowledge*", and whether the act in question amounts merely to "*rashness"* or "*negligence*" or rises to the level of conscious awareness of a likely fatal consequence, is essentially fact-specific and can only be conclusively adjudicated upon appreciation of evidence led by the parties. At the present stage, the Court is not required to and cannot record definitive findings on such mental state. Hence, since the material *prima facie* discloses the ingredients of Section 304 Part II IPC, it was appropriate for the learned JJB to frame notice for the said higher offence, leaving it open to the Board, upon conclusion of inquiry, to determine whether the evidence ultimately sustains the said charge or whether the case falls within the ambit of a lesser offence such as Section 304AIPC. Such an approach obviates the possibility of prejudice or procedural complications that may arise if the evidence were later to justify the higher offence."

11.7. The High Court of Gujarat in **TATHYA PRAGNESHBHAI PATEL v. STATE OF GUJARAT**[7] has held as follows:

[7] R/Criminal Revision Application No.1396 of 2023 decided on 3-12-2025

"…. …. ….

12. Thus, the case on hand is not merely of rash or negligent driving but the evidence on record clearly indicates that while Tathya was driving his vehicle at very high excessive speed and despite being asked by co-passengers to drive slow, he did not though it fit to do so and continued to drive at very high excessive speed resulting into death of nine people and also injuring other persons. This Court is also mindful of the fact that owing to the previous accident, that had occurred between Mahindra Thar and Dumper over Iscon Bridge where police personnel and general people had gathered, however, it cannot be said that because of such gathering, Tathya Patel met with an accident because the factum of Tathya driving his car at highly excessive speed despite being asked by the co-passenger to drive slowly had gone to deaf ears. Even in the midst of the night when there is even a visibility issue coupled with the fact of driving a car with dark glasses at a high excessive speed, under such circumstances, it cannot be said that the accused No. 1 Tathya Patel was driving his car with a hope that the consequences would not follow.

If the argument for the Ld. Counsel for the Applicant are considered, then in no case the provisions of Section 304 Part II of the IPC can be made applicable. What is to be seen is the facts and circumstances of the each case, manner in which the accident took place, conduct of the accused before, during and after the accident and keeping all these aspects read with the papers of the chargesheet, it cannot be said that this is a pure and simple case of rash and negligence driving. Thus, it cannot be stated that the Applicant had a hope and was under the belief that he had taken sufficient precaution to prevent the happening. This imputability arises from persisting in excessive speed despite being asked to drive slowly.

13. Even on perusal of the charge-sheet, what has been imputed to the accused No. 1 is not merely that he drove at excessive speed and driving in a negligent manner but if the car is driven at high and excessive speed and in a manner and despite having knowledge that this would lead to death was driven in such a manner which resulted into the death of nine persons.

14. Thus, the present case falls within last clause of Section 299 of the IPC and not clause fourthly of Section 300 coupled with the fact of driving the vehicle at an excessive speed with a knowledge of dangerous consequences, despite having been asked to drive slow was not given heed by the accused.

Ld. Advocate for the respective parties have referred to judgment as stated hereinabove. This Court has considering the principles established in the said judgment. At this stage it would be opt to consider the judgment in the case of the Regional Manager and Another Vs. Pawan Kumar Dubey Reported in 1976 AIR 1766, wherein, it is held as under:-

> *"……..It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One Additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. "*

In the case of Megh Singh Vs. State of Punjab reported in AIR 2003 SUPREME COURT 3184, it is held as under:-

> *"Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact based"*

In view of the aforesaid principles, this Court has considered the ratio laid down in the judgment referred to, however, each case has to be decided on its own facts and the law applicable to such case is kept in mind while deciding the present Application.

15. Under such circumstances, it cannot be said that this is a pure and simple case of rash and negligent driving attracting provisions of Section 304A of the IPC. From the bare reading of the papers of the charge-sheet, a strong prima facie case of Section 304 Part 2 is made out. More particularly, when the law for the purpose of holding accused guilty for the offence

punishable under Section 304 Part 2 of the IPC, it is not necessary to bring the case of the prosecution within one of the exceptions of Section 300 of IPC. Thus, if the case on hand is considered without controverting it, there is strong prima facie material against the present accused No. 1 to proceed with the offence under Section 304 Part II of the IPC and Section 308. Thus, no case is made out for discharging the Applicant – Org. Accused No. 1 for the offence punishable under Section 304 and 308 of the IPC, however, considering the role attributed to the Org. Accused No. 2 – Pragnesh Harshadbhai Patel, the Applicant– Org. Accused No. 2 has sought discharge for the offence punishable under Section 279,337,338,304 and 308 of IPC with the aid of Section 107 and also seeking discharge under the provisions of Section 177, 184 and 134(b) of the MV Act is concerned.

16. Section 279 of IPC deals with rash driving or riding on a public way.

Section 337 of IPC deals with causing hurt by act endangering life or personal safety of others..

Section 338 of IPC deals with causing grievous hurt by act endangering life or personal safety of others.

Section 304 of IPC deals with punishment for culpable homicide not amounting to murder.

Section 308 of IPC deals with attempt to commit culpable homicide.

Whereas Section 107 defines Abetment of a thing.

Section 177 of the MV Act deals with general provision for punishment of offences.

Section 184 of the MV Act deals with driving dangerously.

Section 134 (b) of the MV Act deals with duty of driver in case of accident and injury to a person.

17. On perusal of the papers of the charge-sheet, the role attributed to accused No.2 i.e., the father of Tathya is to the effect that on receiving the information of the accident, he reached at the place of incident and started

> **quarreling with the persons who had gathered there, used abusive language and also threatened them and took away his son. Thus, even if the defence of the accused No. 2 is not taken into consideration, and considering the facts of the prosecution qua accused No.2 is concerned, at the best provisions of Section 504, 506(2),114 and 118 of IPC are made out, however, no offence under Section 279, 337,338,304,308 of the IPC and Section 177,184 and 134(b) of the MV Act are made out. Thus, Criminal Revision Application No. 1396 of 2023 is allowed in part and Criminal Revision Application No. 1406 of 2023 is dismissed. Org. Accused No. 2, Pragnesh Harshadbhai Patel stands discharged from the offence punishable under Section 279, 337,338,304,308 of the IPC and Section 177,184 and 134(b) of MV Act. The impugned order passed by the Principal District Judge, at Ahmedabad Rural in Sessions Case No. 115/2023 dated 21.10.2023 qua Org. Accused No.2 Pragnesh Harshadbhai Patel stands partly allowed to the aforesaid extent."**
>
> (Emphasis supplied at each instance)

12. On a coalescence of the judgments noticed hereinabove, the line that separates Section 304 Part-II from Section 304A of the IPC emerges with considerable clarity. The distinction does not lie merely in the enormity of the consequence, for death may unfortunately be the consequence under either provision; the distinction lies in the **mental element that precedes the act**. **Section 304A inhabits the realm of rashness and negligence, whereas Section 304 Part-II enters the graver territory of culpable homicide, when the act is accompanied by the**

conscious *knowledge* that death is its likely consequence. Thus, consequence alone cannot metamorphose negligence into culpable homicide; there must be material demonstrating the requisite knowledge attributable to the person whose criminal liability is sought to be fastened.

13. The Apex Court in **YUVRAJ LAXMILAL KANTHER** emphasizes that culpable homicide ordinarily requires a positive act accompanied by the requisite intention or knowledge; **SHANTIBHAI J. VAGHELA** fortifies the principle by holding that mere silence, inaction, lapse or negligence, without something more positive, would not ordinarily answer the ingredients of culpable homicide. **ALISTER ANTHONY PAREIRA**, however, demonstrates the other end of the spectrum: rash or negligent driving may graduate into Section 304 Part-II where the person committing the act possesses knowledge of its dangerous character and of the likelihood that death would ensue. The decisive enquiry, therefore, is not merely whether the conduct was rash, reckless or even grossly negligent, but whether it was accompanied by that higher degree of awareness which the law denominates as *knowledge*.

14. **STATE v. SANJEEV NANDA** carries the principle further and reiterates that "knowledge" under Section 299 is personal knowledge attributable to the person who does the act. The prosecution must therefore establish not merely death, but a causal nexus between the act of the accused and death, coupled with knowledge on his part that such act was likely to cause death. Conversely, where rashness or negligence causes death and nothing more is discernible, the offence remains within Section 304A. The jurisprudential progression is thus from **negligence, to rashness, to knowledge, and finally to intention**, with the degree of criminal culpability ascending correspondingly.

15. **The distinction assumes particular significance in the case at hand. The petitioner was not behind the wheel; his 14-year-old son was. Therefore, the knowledge attributable to the driver cannot, merely by reason of the relationship of father and son, be transplanted upon the petitioner. Equally, however, the petitioner cannot seek discharge merely by asserting that the child clandestinely took away the vehicle. The charge sheet material, as**

noticed, contains statements indicating that the petitioner himself handed over the keys to his minor son and that this was not an isolated occurrence but had allegedly happened on earlier occasions as well. Whether those statements are ultimately worthy of acceptance is a matter of evidence; at the stage of discharge, they cannot be wished away by accepting the defence version as established fact.

16. **The matter, therefore, stands on a footing materially different from a case of mere parental omission or inadvertence. If a parent consciously places a motor vehicle in the hands of a 14-year-old child, knowing fully well that the child is legally incompetent and manifestly unequipped to drive it upon a public road, the question whether such conduct carries with it the requisite knowledge of likely fatal consequences cannot be foreclosed at the threshold. The alleged positive act is the handing over of the keys and permitting the minor to drive; the alleged knowledge must be gathered from that act, its surrounding circumstances and, importantly, the allegation that such permission had**

been granted repeatedly. Whether this crosses the juridical threshold from gross negligence into culpable homicide is ultimately a matter that must abide the evidence.

17. The Delhi High Court in **MASTER M v. STATE (NCT OF DELHI)** lends considerable support to this approach. It recognizes that the distinction between Section 304A and Section 304 Part-II lies not merely in the existence of knowledge, but in its **degree and quality**: rashness involves consciousness of a risk coupled with the hope that the harmful consequence will not occur, whereas Section 304 Part-II demands conscious awareness that death is a likely consequence. Significantly, in the context of a minor driving a vehicle, the Court declined to prematurely efface the graver offence, holding that the existence of the requisite mental element is essentially fact-sensitive and must ordinarily await appreciation of evidence.

18. **If the facts obtaining in the case at hand are placed on the aforesaid legal spectrum, the result becomes unmistakable. Three precious lives have been extinguished and another seriously injured. The magnitude of that**

tragedy, by itself, cannot constitute Section 304 Part-II; criminal culpability cannot be measured by counting the dead. But the prosecution case travels beyond the consequence. It alleges a conscious and positive act on the part of the petitioner - of repeatedly permitting his 14-year-old son to drive and, on the fateful day, of himself handing over the keys of the car to the child. A motor vehicle in the hands of a child of fourteen, upon a public highway, is not merely an instrument being used contrary to law; depending upon the evidence, it is capable of becoming a source of obvious and foreseeable peril to every road user.

19. **Whether the petitioner possessed the degree of knowledge necessary to attract Section 304 Part-II is, therefore, a question that cannot appropriately be buried at the threshold. His defence that the minor took the vehicle without his knowledge directly contradicts the prosecution material and necessarily invites adjudication upon evidence. A discharge proceeding cannot be converted into a miniature trial for choosing between these competing versions.**

20. **The message of the law must equally be unambiguous. A parent who knowingly places the steering wheel in the hands of a child cannot always retreat behind the minority of that child, when the adventure ends in catastrophe. Parenthood carries not merely affection and authority, but responsibility. Roads are shared public spaces, not training grounds for unlawful indulgence. When parental indulgence knowingly permits a child incapable in law of driving to command a machine capable of causing death, and precious lives are consequently lost, the law is entitled to inquire, upon evidence, whether the conduct was merely negligent or had crossed the frontier into culpable knowledge. That enquiry, in the case at hand, deserves a trial and not a premature burial at the stage of discharge.**

EPILOGUE:

21. Before parting with the judgment, it would not be inapt to advert to a disturbing facet of the problem which the case at hand brings to the fore. The statistics in public domain indicates that

during 2025-26, the State of Karnataka recorded **751 accidents involving minors**, out of an all-India figure of **11,890**, placing the State sixth in the country in this unenviable category. The figures further indicate an over-representation of young drivers between 17 and 23 years of age in serious and fatal road accidents. What is disquieting is that the graph in the State does not appear to be bending downwards; it is travelling in the opposite direction.

22. Statistics, undoubtedly, cannot supply an ingredient of an offence where the statute does not. Nor can societal concern become a surrogate for proof of culpability. Yet, Courts cannot remain oblivious to the social setting in which an offence occurs. The case at hand presents a stark reminder of the consequences that may follow when the keys of a motor vehicle are placed in the hands of a child who, in the eye of law, is neither entitled nor equipped to drive it. What may begin as parental indulgence, momentary permissiveness or youthful exhilaration can, within seconds, end in irreversible tragedy on a public road.

23. **The law prohibits minors from driving not as an empty ritual of regulation, but because a motor vehicle, when entrusted to untrained and legally incompetent hands, is capable of becoming an instrument of grave peril. Parents and guardians who permit such adventures cannot treat the statutory prohibition as a matter of convenience and thereafter seek complete insulation from criminal consequences when the foreseeable peril turns into catastrophe. The steering wheel of a motor vehicle cannot become a plaything in the hands of a child, nor can a public road become the playground for such indulgence.**

24. The rising incidence of such accidents, therefore, reinforces the need for Courts to exercise circumspection before interdicting a prosecution at its threshold where the charge sheet itself contains material, *prima facie*, indicating conscious entrustment of the vehicle to a minor. This is not to hold that every parent whose minor child causes an accident would *ipso facto* become liable under Section 304 Part-II of the IPC. Far from it, criminal culpability must invariably depend upon the facts of each

case and the existence of the requisite statutory ingredients. But where the material prima facie depicts a positive act of entrustment coupled with circumstances from which the requisite knowledge is alleged to arise, the prosecution cannot be truncated by conducting a mini-trial in proceedings seeking discharge or quashment.

25. In the case at hand, therefore, the petitioner cannot be permitted to secure obliteration of the offence under Section 304 Part-II of the IPC at the threshold. Whether the prosecution would ultimately succeed in establishing the requisite knowledge beyond reasonable doubt is entirely a matter for trial. **The charge must face the test of evidence rather than suffer a premature burial at the threshold.**

26. For the aforesaid reasons, finding no merit in the petition, the following:

ORDER

(i) The Criminal Petition stands **rejected**.

(ii) It is made clear that all observations made in the course of this order are confined exclusively to consideration of the petitioner's plea seeking discharge/obliteration of the offence punishable under Section 304 Part-II of the IPC.

(iii) The concerned Court shall conduct the trial uninfluenced by any observation made herein and shall determine the culpability of the petitioner independently, on the strength of the evidence that comes on record and in accordance with law.

Consequently, I.A.No.1 of 2026 also stand disposed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp