Alister Anthony Pareira vs State Of Maharashtra on 12 January, 2012

Equivalent citations: 2012 AIR SCW 930, 2012 (2) SCC 648, 2012 CRI. L. J. 1160, AIR 2012 SC(CRI) 419, 2012 (2) AIR BOM R 718, (2012) 1 GUJ LH 405, (2012) 1 CRILR(RAJ) 126, (2012) 1 CURCRIR 147, (2012) 1 UC 579, (2012) 1 CRIMES 76, (2012) 1 MAD LJ(CRI) 627, (2012) 1 SCALE 189, (2012) 1 BOMCR(CRI) 609, (2012) 1 DLT(CRL) 157, (2012) 110 ALLINDCAS 251 (SC), (2012) 2 MH LJ (CRI) 490, (2012) 1 ACC 104, 2012 CRILR(SC&MP) 126, (2012) 1 RECCRIR 524, 2012 CRILR(SC MAH GUJ) 126, (2012) 76 ALLCRIC 660, 2012 CALCRILR 1 602, (2012) 2 CHANDCRIC 20, 2012 (1) SCC (CRI) 953, 2012 (1) KLT SN 33 (SC), AIR 2012 SUPREME COURT 3802

Bench: R.M. Lodha, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1318-1320 OF 2007

Alister Anthony Pareira ...Appellant

Versus

State of Maharashtra ...Respondent

JUDGEMENT

R.M. LODHA, J.

On the South-North Road at the East side of Carter Road, Bandra (West), Mumbai in the early hours of November 12, 2006 between 3.45 - 4.00 a.m., a car ran into the pavement killing seven persons and causing injuries to eight persons. The appellant - Alister Anthony Pareira - was at the wheels. He has been convicted by the High Court for the offences punishable under Sections 304 Part II, 338 and 337 of the Indian Penal Code, 1860 (IPC).

2. The prosecution case against the appellant is this: the repair and construction work of the Carter Road, Bandra (West) at the relevant time was being carried out by New India Construction Company. The labourers were engaged by the construction company for executing the works. The temporary sheds (huts) were put up for the residence of labourers on the pavement.

In the night of November 11, 2006 and November 12, 2006, the labourers were asleep in front of their huts on the pavement. Between 3.45 to 4.00 a.m., that night, the appellant while driving the car (corolla) bearing Registration No. MH-01-R-580 rashly and negligently with knowledge that people were asleep on footpath rammed the car over the pavement; caused death of seven persons and injuries to eight persons. At the time of incident, the appellant was found to have consumed alcohol. A liquor bottle was recovered from the appellant's car. On his medical examination, he was found to have 0.112% w/v liquor (ethyl alcohol) in his blood. The appellant was fully familiar with the area being the resident of Carter Road.

3. The contractor--Panchanadan Paramalai Harijan (PW-2) - who had engaged the labourers and witnessed the incident reported the matter immediately to the Khar Police Station. His statement (Ex. 13) was recorded and based on that a first information report (No. 838) was registered under Section 304, 279, 336, 337, 338 and 427 IPC; Section 185 of the Motor Vehicles Act, 1988 and Section 66 (1)(b) of Bombay Prohibition Act, 1949.

4. On completion of investigation, the charge sheet was submitted against the appellant by the Investigating Officer in the court of Magistrate having jurisdiction. The appellant was committed to the Court of Sessions and was tried by 2nd Adhoc Additional Sessions Judge, Sewree, Mumbai.

5. The indictment of the appellant was on two charges. The two charges read:-

> "(i) that on November 12, 2006 between 3.45 to 4.00 a.m. you have driven the car bearing No. MH-01-R-580 rashly and negligently with knowledge that people are sleeping on footpath and likely to cause death of those persons slept over footpath and thereby caused the death of seven persons who were sleeping on footpath on Carter Road and thereby committed an offence punishable under Section 304 Part II IPC.

(ii) on above date, time and place you have driven the vehicle in rashly and negligent manner and thereby caused grievous injury to seven persons who were sleeping on footpath and thereby committed an offence punishable under Section 338 IPC."

6. The prosecution, to prove the above charges against the appellant, tendered oral as well as documentary evidence. In all, 18 witnesses, namely, Dr. Nitin Vishnu Barve (PW-1), Panchanadan Paramalai Harijan (PW-2), Ramchandra Chakrawarti (PW-3), Pindi Ramu (PW-4), Sriniwas Raman Pindi (PW-5), Smt. Mariamma Shingamana (PW-6), Smt. Prema Chingaram (PW-7), Jagan Singaram (PW-8), Sigamani Shankar Pani (PW-9), Mallikarjun Bajappa Motermallappa (PW-10), J.C. Cell Mendosa (PW-11), Praveen Sajjan Mohite (PW-

12), Limbaji Samadhan Ingle (PW-13), Dr. Sharad Maniklal Ruia (PW-14), Rajendra Nilkanth Sawant (PW-

15), Basraj Sanjeev Mehetri (PW-16), Meenakshi Anant Gondapatil (PW-17) and Somnath Baburam Phulsunder (PW-18) were examined. The complaint, spot panchnama along with sketch map, C.A. Reports and other documents were also proved.

7. The statement of the appellant under Section 313 of the Criminal Procedure Code, 1973 (for short, `the Code') was recorded. He admitted that he was driving the car no. MH-01-R-580 at the relevant time and the accident did occur but his explanation was that it happened on account of failure of engine and mechanical defect in the car and there was no negligence or rashness on his part.

8. The 2nd Adhoc Additional Sessions Judge, Sewree, Mumbai, on April 13, 2007 convicted the appellant for the offences punishable under Sections 304A and 337 IPC. The court sentenced him to suffer simple imprisonment of six months with fine of Rs. 5 lakhs for the offence under Section 304A IPC and in default further suffer simple imprisonment of one month and simple imprisonment of 15 days for the offence under Section 337 IPC. Both the sentences were ordered to run concurrently.

9. On April 19, 2007, the Bombay High Court took suo motu cognizance of the judgment and order dated April 13, 2007 passed by the 2nd Adhoc Additional Sessions Judge, Sewree and issued notice to the State of Maharashtra, the appellant and to the heirs of the deceased and also to the injured persons.

10. The State of Maharashtra preferred criminal appeal (No. 566 of 2007) under Section 378(3) of the Code challenging the acquittal of the appellant under Sections 304 Part II and 338 IPC. Another criminal appeal (No. 430 of 2007) was also preferred by the State of Maharashtra seeking enhancement of sentence awarded to the appellant for the offence under Section 304A and Section 337 IPC by the trial court.

11. The appellant also preferred criminal appeal (No. 475/2007) for setting aside the judgment and order dated April 13, 2007 passed by the trial court convicting him under Section 304A and Section 337 IPC and the sentence awarded to him by the trial court.

12. All these matters were heard together by the High Court and have been disposed of by the common judgment on September 6, 2007. The High Court set aside the acquittal of the appellant under Section 304 IPC and convicted him for the offences under Section 304 Part II, Section 338 and Section 337 IPC. The High Court sentenced the appellant to undergo rigorous imprisonment for three years for the offence punishable under Section 304 Part II IPC with a fine of Rs. 5 lakhs.

On account of offence under Section 338 IPC, the appellant was sentenced to undergo rigorous imprisonment for a term of one year and for the offence under Section 337 IPC rigorous imprisonment for six months. The High Court noted that fine amount as per the order of the trial court had already been distributed to the families of victims.

13. It is from the above judgment of the High Court that the present appeals have been preferred by the appellant.

14. A great deal of argument in the hearing of the appeals turned on the indictment of the appellant on the two charges, namely, the offence punishable under Section 304 Part II IPC and the offence punishable under Section 338 IPC and his conviction for the above offences and also under Section 337 IPC. Mr. U.U. Lalit, learned senior counsel for the appellant argued that this was legally impermissible as the charges under Section 304 Part II IPC and Section 338 IPC were mutually destructive and the two charges under these Sections cannot co-exist. His submission was that the appellant was charged for the above offences for committing a single act i.e., rash or negligent for causing injuries to eight persons and at the same time committed with knowledge resulting in death of seven persons which is irreconcilable and moreover that has caused grave prejudice to the appellant resulting in failure of justice.

15. Mr. U.U. Lalit, learned senior counsel also argued that no question was put to the appellant in his statement under Section 313 of the Code about his drunken condition or that he was under the influence of alcohol and, thus, had knowledge that his act was likely to result in causing death. CA Report (Ex. 49) that blood and urine of the appellant had alcohol content and the evidence of PW-1 that he found the appellant in drunken condition and his blood sample was taken were also not put to the appellant. These incriminating evidences, learned senior counsel submitted, cannot form basis of conviction. The conclusion arrived at by the Investigating Officers (PW-17 and PW-18) regarding drunken condition of the appellant which was put to the appellant in his statement under Section 313 of the Code was of no legal use. Moreover, PW-17 and PW-18 have not deposed before the court that the appellant was found in drunken condition much less under the influence of liquor.

Learned senior counsel would thus submit that the sole basis of the appellant's conviction under Section 304 Part-II IPC that the appellant had knowledge that his reckless and negligent driving in a drunken condition could result in serious consequences of causing a fatal accident cannot be held to have been established. In this regard, learned senior counsel relied upon two decisions of this Court, namely, (i) Ghulam Din Buch & Ors. v. State of J & K1 and (ii) Kuldip Singh & Ors. v. State of Delhi2.

1 1996 (9) SCC 239 2 2003 (12) SCC 528

16. Mr. U.U. Lalit vehemently contended that no charge was framed that the appellant had consumed alcohol. Moreover, he submited that no reliance could be placed on C.A. Report (Ex. 49) as the evidence does not satisfactorily establish that the samples were kept in safe custody until they reached the CFSL. Moreover, no charge was framed by the court against the appellant under Section 185 of the Motor Vehicles Act, 1988 and Section 66(1)(b) of the Bombay Prohibition Act, 1949.

17. Learned senior counsel argued that appellant's conviction under Section 304A, 338 and 337 IPC was not legally sustainable for more than one reason.

First, no charge under Section 304A IPC was framed against the appellant as he was charged only under Section 304 Part II IPC and Section 338 IPC which are not the offences of the same category. In the absence of charge under Section 304A IPC, the appellant cannot be convicted for the said offence being not a minor offence of Section 304 Part II IPC. The charge under Section 338 IPC does not help the prosecution as by virtue of that charge the appellant cannot be convicted under Section 304A IPC being graver offence than Section 338 IPC.

Secondly, the accident had occurred not on account of rash or negligent act of the appellant but on account of failure of the engine. He referred to the evidence of Rajendra Nilkanth Sawant (PW-15) who deposed that he could not state if the accident took place due to dislodging of right side wheel and dislodging of the engine from the foundation. In the absence of any firm opinion by an expert as regards the cause of accident, the possibility of the accident having occurred on account of mechanical failure cannot be ruled out. Thirdly, in the absence of medical certificate that the persons injured received grievous injuries, charge under Section 338 IPC was not established.

18. Learned senior counsel lastly submitted that in case the charges against appellant are held to be proved, having regard to the facts, namely, the age of the appellant at the time of the accident; the appellant being the only member to support his family - mother and unmarried sister - having lost his father during the pendency of the present appeals; the fine and compensation of Rs. 8.5 lakhs having been paid and the sentence of two months already undergone, the appellant may be released on probation of good conduct and behavior or, in the alternative, the sentence may be reduced to the period already undergone by the appellant.

19. On the other hand, Mr. Sanjay Kharde, learned counsel for the State of Maharashtra stoutly defended the judgment of the High Court. He argued that the fact that labourers were asleep on the footpath has gone unchallenged by the defence. He would submit that the drunken condition of the appellant is fully proved by the evidence of PW-1. Further, PW-1 has not at all been cross-examined on this aspect. The recovery of liquor bottle is proved by the evidence of spot panchas (PW-11 and PW-16). They have not been cross examined in this regard. PW-17 collected blood sample of the appellant from PW-1 and then PW-18 forwarded the blood sample to the chemical analyzer along with the forwarding letter. The appellant has not challenged C.A. Report (Ex. 49) in the cross-examination of PW-18.

20. Learned counsel for the State submitted that the involvement of the appellant in the incident has been fully established by the evidence of PW-13 who was an eye-witness and working as a watchman

at construction site. Moreover, the appellant was apprehended immediately after the incident. There is no denial by the appellant about occurrence of the accident. The defence of the appellant was that the accident happened due to engine and mechanical failure but the appellant has failed to probablise his defence. He referred to the evidence of PW-15 - motor vehicle inspector - to show that the brake and the gear of the car were operative.

21. Learned counsel for the State referred to the evidence of injured witnesses and also the evidence of PW-12 and PW-14 who issued medical certificates and submitted that the prosecution has established beyond reasonable doubt that the knowledge was attributable to the accused as he was driving the car in a drunken condition at a high speed. The accused had the knowledge, as he was resident of the same area, that the labourers sleep at the place of occurrence. Learned counsel submitted that the evidence on record and the attendant circumstances justify attributability of actual knowledge to the appellant and the High Court rightly held so. In this regard, the learned counsel for the State placed reliance upon two decisions of this Court in Jai Prakash v. State (Delhi Administration)3 and Joti Parshad v. State of Haryana4. He disputed that there was any error in the framing of charge. He would contend that in any case an error or omission in framing of charge or irregularity in the charge does not invalidate the 3 1991 (2) SCC 32 4 1993 Supp (2) SCC 497 conviction of an accused. The omission about the drunken condition of the accused in the charge at best can be said to be an irregularity but that does not affect the conviction. In this regard, he relied upon Section 464 of the Code and the decisions of this Court in Willie (William) Slaney v. State of Madhya Pradesh5, Dalbir Singh v. State of U.P.6 and Annareddy Sambasiva Reddy and others v. State of Andhra Pradesh7.

22. Mr. Sanjay Kharde submitted that by not putting C.A. Report (Ex. 49) to the appellant in his statement under Section 313 of the Code, no prejudice has been caused to him as he admitted in his statement under Section 313 of the Code that he was fully aware about the statement of the witnesses and exhibits on record. In this regard, learned counsel relied upon decision of this Court in Shivaji Sahabrao Bobade and another v. State of Maharashtra8 .

5 AIR 1956 SC 116 6 2004 (5) SCC 334 7 2009 (12) SCC 546 8 1973 (2) SCC 793

23. Lastly, learned counsel for the State submitted that the circumstances pointed out by the learned senior counsel for the appellant do not justify the benefit of probation to the appellant or reduction of the sentence to the period already undergone. He submitted that seven innocent persons lost their lives and eight persons got injured due to the act of the appellant and, therefore, no sympathy was called for. He submitted that sentence should be proportionate to the gravity of offence. He relied upon the decisions of this Court in State of Karnataka v. Krishnappa9, Dalbir Singh v. State of Haryana10, Shailesh Jasvantbhai and another v. State of Gujarat and others11 and Manish Jalan v. State of Karnataka12.

24. On the contentions of the learned senior counsel for the appellant and the counsel for the respondent, the following questions arise for our consideration :

9 2000 (4) SCC 75 10 2000 (5) SCC 82 11 2006 (2) SCC 359 12 2008 (8) SCC 225

> (i) Whether indictment on the two charges, namely, the offence punishable under Section 304 Part II IPC and the offence punishable under Section 338 IPC is mutually destructive and legally impermissible? In other words, whether it is permissible to try and convict a person for the offence punishable under Section 304 Part II IPC and the offence punishable under Section 338 IPC for a single act of the same transaction?

(ii) Whether by not charging the appellant of `drunken condition' and not putting to him the entire incriminating evidence let in by the prosecution, particularly the evidence relating to appellant's drunken condition, at the time of his examination under Section 313 of the Code, the trial and conviction of the appellant got affected?

(iii) Whether prosecution evidence establishes beyond reasonable doubt the commission of the offences by the appellant under Section 304 Part II, IPC, Section 338 IPC and Section 337 IPC?

(iv) Whether sentence awarded to the appellant by the High Court for the offence punishable under Section 304 Part II IPC requires any modification?

re: question (i)

25. Section 304 IPC provides for punishment for culpable homicide not amounting to murder. It reads as under:

> "S.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".

26. The above Section is in two parts. Although Section does not specify Part I and Part II but for the sake of convenience, the investigators, the prosecutors, the lawyers, the judges and the authors refer to the first paragraph of the Section as Part I while the second paragraph is referred to as Part II. The constituent elements of Part I and Part II are different and, consequently, the difference in punishment. For punishment under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death. In order to find out that an offence is `culpable homicide not amounting to murder' - since Section 304 does not define this expression - Sections 299 and 300 IPC have to be

seen. Section 299 IPC reads as under:

> "S.-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."

27. To constitute the offence of culpable homicide as defined in Section 299 the death must be caused by doing an act: (a) with the intention of causing death, or

(b) with the intention of causing such bodily injury as is likely to cause death, or (c) with the knowledge that the doer is likely by such act to cause death.

28. Section 300 deals with murder and also provides for exceptions. The culpable homicide is murder if the act by which the death is caused is done: (1) with the intention of causing death, (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or (3) with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, or (4) 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. The exceptions provide that the culpable homicide will not be murder if that act is done with the intention or knowledge in the circumstances and subject to the conditions specified therein. In other words, the culpable homicide is not murder if the act by which death is caused is done in extenuating circumstances and such act is covered by one of the five exceptions set out in the later part of Section 300.

29. It is not necessary in the present matter to analyse Section 299 and Section 300 in detail. Suffice it to say that the last clause of Section 299 and clause `fourthly' of Section 300 are based on the knowledge of the likely or probable consequences of the act and do not connote any intention at all.

30. Reference to few other provisions of IPC in this regard is also necessary. Section 279 makes rash driving or riding on a public way so as to endanger human life or to be likely to cause hurt or injury to any other person an offence and provides for punishment which may extend to six months, or with fine which may extend to Rs. 1000/-, or with both.

31. Causing death by negligence is an offence under Section 304A. It reads :

> "S.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."

32. Section 336 IPC says that whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a

term which may extend to three months, or with fine which may extend to Rs. 250/-, or with both.

33. Section 337 IPC reads as follows :

> "S. 337. - Causing hurt by act endangering life or personal safety of others.--Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

34. Section 338 IPC is as under :

> "S. 338. - Causing grievous hurt by act endangering life or personal safety of others.
>
> --Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."

35. In Empress of India v. Idu Beg13, Straight J., explained the meaning of criminal rashness and criminal negligence in the following words: 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 13 1881 (3) All 776 the imperative duty of the accused person to have adopted.

36. The above meaning of criminal rashness and criminal negligence given by Straight J. has been adopted consistently by this Court.

37. Insofar as Section 304A IPC is concerned, it deals with death caused by doing any rash or negligent act where such death is caused neither intentionally nor with the knowledge that the act of the offender is likely to cause death. The applicability of Section 304A IPC is limited to rash or negligent acts which cause death but fall short of culpable homicide amounting to murder or culpable homicide not amounting to murder. An essential element to attract Section 304A IPC is death caused due to rash or negligent act. The three things which are required to be proved for an offence under Section 304A are : (1) death of human being; (2) the accused caused the death and (3) the death was caused by the doing of a rash or negligent act, though it did not amount to culpable homicide of either description.

38. Like Section 304A, Sections 279, 336, 337 and 338 IPC are attracted for only the negligent or rash act.

39. The scheme of Sections 279, 304A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life. The question is whether indictment of an accused under Section 304 Part II and Section 338 IPC can co-exist in a case of single rash or negligent act. We think it can. We do not think that 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.

40. 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 the IPC - the cases which fall within 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 304A IPC takes out of its ambit the cases of death of any person by doing any rash or negligent act amounting to culpable homicide of either description.

41. 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.

42. There is no incongruity, if simultaneous 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 co-exist 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 legally impermissible course.

45. In Prabhakaran Vs. State of Kerala14, 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 bus was being driven by the appellant therein at the 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 14 2007 (14) SCC 269 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. While observing that Section 304A 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 304A 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 that the appropriate conviction would be under Section 304A IPC and not Section 304 Part II IPC. Prabhakaran14 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. Prabhakaran14 turned on its own facts. 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 304A 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 wrong doer to cause death, offence may be punishable under Section 302 IPC.

re: question (ii)

46. On behalf of the appellant it was strenuously urged that the conviction of the appellant by the High Court for the offence under Section 304 Part II IPC rests solely on the premise that the appellant had knowledge that his reckless or negligent driving in a drunken condition could result in serious consequences of causing fatal accident . It was submitted that neither in the charge framed against the appellant, the crux of the prosecution case that the appellant was in a drunken condition was stated nor incriminating evidences and circumstances relating to rashness or negligence of the

accused in the drunken condition were put to him in the statement under Section 313 of the Code.

47. It is a fact that no charge under Section 185 of the Motor Vehicles Act, 1988 and Section 66(1)(b) of the Bombay Prohibition Act, 1949 was framed against the appellant. It is also a fact that in the charge framed against the appellant under Section 304 Part II IPC, the words `drunken condition' are not stated and the charge reads; `on November 12, 2006 between 3.45 to 4.00 a.m. he was driving the car bearing Registration No. MH-01-R-580 rashly and negligently with knowledge that people are sleeping on footpath and likely to cause death of those persons rammed over the footpath and thereby caused death of 8 persons who were sleeping on footpath on Carter Road, Bandra (West), Mumbai and thereby committed an offence punishable under Section 304 Part II IPC'. The question is whether the omission of the words, `in drunken condition' after the words `negligently' and before the words `with knowledge' has caused any prejudice to the appellant.

48. Section 464 of the Code reads as follows:

> "S.464. - Effect of omission to frame, or absence of, or error in, charge.-
>
> (1) No finding sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. (2) If the court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-
>
> (a) In the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.
>
> (b) In the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:
>
> Provided that if the court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

49. The above provision has come up for consideration before this Court on numerous occasions.

It is not necessary to refer to all these decisions.

Reference to a later decision of this Court in the case of Anna Reddy Sambasiva Reddy7 delivered by one of us (R.M. Lodha, J.) shall suffice. In paras 55-56 of the Report in Anna Reddy Sambasiva Reddy7 it has been stated as follows:

> "55. In unmistakable terms, Section 464 specifies that a finding or sentence of a court shall not be set aside merely on the ground that a charge was not framed or that charge was defective unless it has occasioned in prejudice. Because of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if accused has not been adversely affected thereby. If the ingredients of the section are obvious or implicit, conviction in regard thereto can be sustained irrespective of the fact that the said section has not been mentioned.
>
> 56. A fair trial to the accused is a sine quo non in our criminal justice system but at the same time procedural law contained in the Code of Criminal Procedure is designed to further the ends of justice and not to frustrate them by introduction of hyper- technicalities. Every case must depend on its own merits and no straightjacket formula can be applied; the essential and important aspect to be kept in mind is: has omission to frame a specific charge resulted in prejudice to the accused."

50. In light of the above legal position, if the charge under Section 304 Part II IPC framed against the appellant is seen, it would be clear that the ingredients of Section 304 Part II IPC are implicit in that charge.

The omission of the words `in drunken condition' in the charge is not very material and, in any case, such omission has not at all resulted in prejudice to the appellant as he was fully aware of the prosecution evidence which consisted of drunken condition of the appellant at the time of incident.

51. PW-1 is the doctor who examined the appellant immediately after the incident. In his deposition he stated that he had taken the blood of the accused as he was found in drunken condition. On behalf of the appellant PW-1 has been cross examined but there is no cross-examination of PW-1 on this aspect.

52. It is a fact that evidence of PW-1, as noticed above, has not been put to the appellant in his statement under Section 313 of the Code but that pales into insignificance for want of cross examination of PW-1 in regard to his deposition that the appellant was found in drunken condition and his blood sample was taken.

53. CA Report (Ex. 49) too has not been specifically put to the appellant at the time of his examination under Section 313 of the Code but it is pertinent to notice that PW-18 (Investigating Officer) deposed that he had forwarded blood sample of the accused and the bottle found in the car to the chemical analyzer (CA) on 14.11.2006 and 15.11.2006 respectively. He further deposed that he collected the medical certificate from Bhabha Hospital and he had received the CA report (Ex. 49). PW-18 has also not been cross examined by the defence in respect of the above. In the examination under Section 313 of the Code the following questions were put to the appellant: Question 9: "What you want to say about the further evidence of above two witnesses that police while drawing spot panchanama seized one ladies chappal, remote, lighter, cigarette perfume and so called liquor bottle from the vehicle i.e. MH-01-R-580?" The appellant answered `I do not know' Question 16: " What you want to say about the evidence of Meenakashi Patil who has stated that initial investigation as

carried out by her and further investigation was entrusted to PI Phulsunder from 13.11.2006 and on due investigation police concluded themselves that your rash and negligence driving caused the death of seven persons and injury to the eight persons by vehicle No. MH-01-R-580 by consuming alcohol so police have charge sheeted you?" He answered, `It is false'.

54. The above questions in his examination under Section 313 of the Code show that the appellant was fully aware of the prosecution evidence relating to his rash and negligent driving in the drunken condition. In the circumstances, by not putting to the appellant expressly the CA report (Ex. 49) and the evidence of PW 1, no prejudice can be said to have been caused to the appellant. The words of P.B. Gajendragadkar, J. (as he then was) in Jai Dev Vs. State of Punjab15 speaking for three-Judge Bench with reference to Section 342 of the Code (corresponding to Section 313 of the 1973 Code) may be usefully quoted:

> "21 . . . . . the ultimate test in determining whether or not the accused has been fairly
> 15 AIR 1963 SC 612 examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. . . . . .".

55. In Shivaji Sahabrao Bobade and Anr. Vs. State of Maharashtra8 a 3-Judge Bench of this Court stated:

> "16. .....It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction".

56. The above decisions have been referred in Asraf Ali Vs. State of Assam16. The Court stated:

> "21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary

corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice.

24. In certain cases when there is perfunctory examination under Section 313 of the Code, the matter is remanded to the trial court, with a direction to retry from the stage at which the prosecution was closed".

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57. From the above, the legal position appears to be this : the accused must be apprised of incriminating evidence and materials brought in by the prosecution against him to enable him to explain and respond to such evidence and material. Failure in not drawing the attention of the accused to the incriminating evidence and inculpatory materials brought in by prosecution specifically, distinctly and separately may not by itself render the trial against the accused void and bad in law;

firstly, if having regard to all the questions put to him, he was afforded an opportunity to explain what he wanted to say in respect of prosecution case against him and secondly, such omission has not caused prejudice to him resulting in failure of justice. The burden is on the accused to establish that by not apprising him of the incriminating evidence and the inculpatory materials that had come in the prosecution evidence against him, a prejudice has been caused resulting in miscarriage of justice.

58. Insofar as present case is concerned, in his statement under Section 313, the appellant was informed about the evidence relating to the incident that occurred in the early hours (between 3.45 a.m. to 4.00 a.m.) of November 12, 2006 and the fact that repairs were going on the road at that time. The appellant accepted this position. The appellant was also informed about the evidence of the prosecution that vehicle No. MH-01-R-580 was involved in the said incident. This was also accepted by the appellant. His attention was brought to the evidence of the eye-witnesses and injured witnesses, namely, PW-2, PW-3, PW-4, PW-5, PW-6, PW-

7, PW-8, PW-9 and PW-10 that at the relevant time they were sleeping on the pavement of Carter Road, Bandra (West) outside the temporary huts and there was an accident in which seven persons died and eight persons got injured. The attention of the appellant was also drawn to the evidence of

the spot panchas (PW-11 and PW-16) that they had noticed that the car no. MH-01-R-

580 at the time of preparation of spot panchnama was in a heavily damaged condition with dislodged right side wheel and some blood was found on the earth and the huts were found damaged. The prosecution evidence that the appellant was seen driving car no. MH-01-R-580 at high speed from Khar Danda side and that rammed over the footpath and crushed the labourers sleeping there was also brought to his notice. The evidence of the mechanical expert (PW-15) that he checked the vehicle and found no mechanical defect in the car was also brought to his notice. During investigation, the police concluded that the rash and negligent driving of the appellant by consuming alcohol caused the death of seven persons and injury to the eight persons. The conclusion drawn on the completion of investigation was also put to him. The appellant's attention was also invited to the materials such as photographs, mechanical inspections of the car, seized articles, liquor bottle, etc. Having regard to the above, it cannot be said that the appellant was not made fully aware of the prosecution evidence that he had driven the car rashly or negligently in a drunken condition. He had full opportunity to say what he wanted to say with regard to the prosecution evidence.

59. The High Court in this regard held as under :

> "29.....The salutary provision of section 313 of the Code have been fairly, or at least substantially, complied with by the trial court, in the facts and circumstances of this case. The real purpose of putting the accused at notice of the incriminating circumstances and requiring him to offer explanation, if he so desires, has been fully satisfied in the present case. During the entire trial, copies of the documents were apparently supplied to the accused, even prior to the framing of the charge. After such charge was framed, all the witnesses were examined in the presence of the accused and even limited questions regarding incriminating material put by the court to the accused in his statement under Section 313 of the Code shows that the entire prosecution case along with different exhibits was put to the accused. He in fact did not deny the suggestions that the witnesses had been examined in his presence and he was aware about the contents of their statements. All this essentially would lead to only one conclusion that the contention raised on behalf of the accused in this regard deserves to be rejected. While rejecting this contention we would also observe that the admission or confession of the accused in his statement under section 313 of the Code, in so far as it provides support or even links to, or aids the case of the prosecution proved on record, can also be looked into by the court in arriving at its final conclusion. It will be more so when explanation in the form of answers given by the accused under Section 313 of the Code are apparently untrue and also when no cross examination of the crucial prosecution witnesses was conducted on this line."

We are in agreement with the above view of the High Court.

r e: question (iii)

60. The crucial question now remains to be seen is whether the prosecution evidence establishes beyond reasonable doubt the commission of offence under Section 304 Part II IPC, Section 338 IPC and Section 337 IPC against the appellant.

61. The appellant has not denied that in the early hours of November 12, 2006 between 3.45-4.00 a.m. on the South-North Road at the East side of Carter Road, Bandra (West), Mumbai, the car bearing registration no. MH-01-R-580 met with an accident and he was at the wheels at that time. PW-13 was working as a watchman at the construction site. He witnessed the accident. He deposed that he noticed that in the night of November 11, 2006 and November 12, 2006 at about 4.00 a.m., the vehicle bearing no. MH-01-R-580 came from Khar Danda side; the vehicle was in high speed and rammed over the pavement and crushed the labourers. He deposed that 14-15 persons were sleeping at that time on the pavement. He stated that he used to take rounds during his duty hours. His evidence has not at all been shaken in the cross-examination.

62. PW-2 is the complainant. He lodged the complaint of the incident at the Khar Police Station. In his deposition, he has stated that he was contractor with New India Construction Co. and nine labourers were working under him. At Carter Road, the work of road levelling was going on. He and other persons were sleeping in a temporary hutment near railway colony.

The labourers were sleeping on the pavement. When he was easing himself, at about 3.30 a.m. of November 12, 2006, he heard the commotion and saw the smoke coming out of the vehicle that rammed over the footpath.

Six persons died on the spot; one expired in the hospital and eight persons sustained injuries. He confirmed that the police recorded his complaint and the complaint (Ex.

13) was read over to him by the police and was correct.

He has been cross-examined by the defence but there is no cross examination in respect of his statement that he had got up to ease himself at about 3.30 a.m. on November 12, 2006 and he heard the commotion and saw smoke coming out of the vehicle. He has denied the suggestion of the defence that road was blocked to some extent for construction purpose. He denied that he had filed false complaint so as to avoid payment of compensation to the workers.

63. The first Investigating Officer (PW-17), who proceeded along with the staff no sooner the message was received from Khar 1 Mobile Van that accident had taken place at Carter Road, near Railway Officers Quarters and reached the spot, has deposed that on her arrival at the spot, she came to know that the labourers who were sleeping on footpath were run over by the vehicle bearing No. MH-01-R-580. She shifted the injured to the Bhabha Hospital; went to the Khar police station for recording the complaint and then came back to the site of accident and prepared Panchnama (Ex. 28) in the presence of Panchas PW-11 and PW-16. Exhibit 28 shows that the accident spot is towards south of railway quarters gate and is at a distance of about 110 feet. The length of footpath between railway quarters gate and Varun Co-operative Housing Society gate is about 160 feet. The accident spot is about 50 feet from the Varun Co-operative Housing Society gate. On the footpath,

between railway quarters gate and Varun Co-operative Housing Society gate, the temporary sheds were set up.

The vehicle (Toyota Corolla) bearing No. MH-01-R-580 was lying in the middle of the road between road divider and footpath on Carter Road at about 50 feet from the north side of Varun Co-operative Housing Society gate and about 110 feet from railway quarters gate on the south side. The front wheel of the car was broken and mudguard was pressed. The spot panchnama shows 70 feet long brake marks in a curve from west side of the road divider towards footpath on eastern side. It is further seen from the spot panchnama that a tempo, mud digger and two trucks were parked on the road between Railway Quarters gate and Varun Cooperative Housing Society gate near the accident spot. The spot panchnama is duly proved by PW-11 and PW-16. There is nothing in the cross-examination of these witnesses to doubt their presence or veracity. The long brake marks in curve show that vehicle was being driven by the appellant at the high speed; the appellant had lost control of the speeding vehicle resulting in the accident and, consequently, seven deaths and injury to eight persons.

64. PW-15 is a motor vehicle inspector. He deposed that he was summoned by the control room to check the vehicle MH 01-R-580 involved in the accident.

At the time of inspection, right side wheel of the vehicle was found dislodged from the body of the vehicle and the engine was dislodged from the foundation; though the steering wheel was intact and brake lever and gear lever were operative. There was no air in the front wheel of the vehicle. He opined that accident might have happened on account of dash. He has been briefly cross-examined and the only thing he said in the cross-examination was that he could not say whether the accident took place due to dislodging of right side wheel and dislodging of engine from foundation.

65. The above evidence has been considered by the High Court quite extensively. The High Court, on consideration of the entire prosecution evidence and having regard to the deficiencies pointed out by the defence, reached the conclusion that (1) the accused at the time of driving the car was under the influence of liquor; (2) he drove the car in drunken condition at a very high speed; and (3) he failed to control the vehicle and the vehicle could not be stopped before it ran over the people sleeping on the pavement. The High Court observed that the accused could not concentrate on driving as he was under the influence of liquor and the vehicle was being driven with loud noise and a tape recorder being played in high volume. The High Court held that the accused had more than 22 feet wide road for driving and there was no occasion for a driver to swing to the left and cover a distance of more than 55 feet; climb over the footpath and run over the persons sleeping on the footpath. The High Court took judicial notice of the fact that in Mumbai people do sleep on pavements. The accused was also aware of the fact that at the place of occurrence people sleep as the accused was resident of that area. The High Court took note of the fact that the accused had admitted the accident and his explanation was that the accident occurred due to mechanical failure and the defect that was developed in the vehicle but found his explanation improbable and unacceptable. The High Court also observed that the factum of high and reckless speed was evident from the brake marks at the site. The speeding car could not be stopped by him instantaneously. In the backdrop of the above findings, the High Court held that the accused could be attributed to have

a specific knowledge of the event that happened. The High Court, thus concluded that the accused had knowledge and in any case such knowledge would be attributable to him that his actions were dangerous or wanton enough to cause injuries which may even result into death of persons.

66. We have also carefully considered the evidence let in by 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 the 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. 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.

67. The trial court convicted the accused of the offence under Section 337 IPC but acquitted him of the charge under Section 338 IPC. The High Court noticed that two injured persons, namely, PW-6 and PW-8 had injuries over the right front temporal parietal region of the size of 5x3 cms. with scar deep with bleeding (Ex. 37 and 33 respectively). The High Court held that these were not simple injuries and were covered by the grievous hurt under Section 320 IPC. We agree. Charge under Section 338 IPC against the appellant is clearly established.

68. Insofar as charge under Section 337 IPC is concerned, it is amply established from the prosecution evidence that PW-5, PW-7, PW-9 and PW-10 received various injuries; they suffered simple hurt. The trial court as well as the High Court was justified in convicting the appellant for the offence punishable under Section 337 IPC as well.

r e: question (iv)

69. The question now is whether the maximum sentence of three years awarded to the appellant by the High Court for the offence under Section 304 Part II IPC requires any modification? It was argued on behalf of the appellant that having regard to the facts : (i) the appellant has already undergone sentence of two months and has paid Rs. 8,50,000/- by way of fine and compensation; (ii) the appellant is further willing to pay reasonable amount as compensation/fine as may be awarded by this Court; (iii) the appellant was about 20 years of age at the time of incident; and (iv) the appellant lost his father during the pendency of the appeal and presently being the only member to support his family which comprises of mother and unmarried sister, he may be released on probation of good conduct and behaviour or the sentence awarded to him be reduced to the period already undergone.

70. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

71. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence.

As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

72. This Court has laid down certain principles of penology from time to time. There is long line of cases on this aspect. However, reference to few of them shall suffice in the present case.

73. In the case of Krishnappa9, though this Court was concerned with the crime under Section 376 IPC but with reference to sentencing by courts, the Court made these weighty observations :

> "18. ..... Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. ....."

74. In the case of Dalbir Singh10, this Court was concerned with a case where the accused was held guilty of the offence under Section 304A IPC. The Court made the following observations (at Pages 84-85 of the Report):

> "1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One

> of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic."

Then while dealing with Section 4 of the Probation of Offenders Act, 1958, it was observed that Section 4 could be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on the probation of good conduct. For application of Section 4 of the Probation of Offenders Act, 1958 to convict under Section 304A IPC, the court stated in paragraph 11 of the Report (at Pg. 86) thus:-

> "Courts must bear in mind that when any plea is made based on Section 4 of the PO Act for application to a convicted person under Section 304-A IPC, that road accidents have proliferated to an alarming extent and the toll is galloping day by day in India, and that no solution is in sight nor suggested by any quarter to bring them down....."

Further, dealing with this aspect, in paragraph 13 (at page 87) of the Report, this Court stated :

> "Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

75. In State of M.P. v. Saleem alias Chamaru & Anr.17, while considering the case under Section 307 IPC this Court stated in paragraphs 6-10 (pages 558-559) of the Report as follows :

> "6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every

court to award proper sentence having regard to the nature of 17 2005 (5) SCC 554 the offence and the manner in which it was executed or committed, etc. . . . . .

7. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California (402 US 183) that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

8. The object should be to protect society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

9. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.

10. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal"."

76. In the case of Shailesh Jasvantbhai11, the Court referred to earlier decisions in Dhananjoy Chatterjee alias Dhana v. State of W.B.18, Ravji alias Ram Chandra v. State of Rajasthan19, State of

M.P. v.

Ghanshyam Singh20, Surjit Singh v. Nahara Ram & Anr.21, 18 (1994) 2 SCC 220 19 (1996) 2 SCC 175 20 (2003) 8 SCC 13 21 (2004) 6 SCC 513 State of M.P. v. Munna Choubey22. In Ravji19, this Court stated that the court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

77. In Manish Jalan12, this Court considered Section 357 of the Code in a case where the accused was found guilty of the offences punishable under Sections 279 and 304A IPC. After noticing Section 357, the Court considered earlier decision of this Court in Hari Singh v.

Sukhbir Singh & Ors.23 wherein it was observed, `it may be noted that this power of courts to award compensation 22 (2005) 2 SCC 710 23 (1988) 4 SCC 551 is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system". Then the court noticed another decision of this Court in Sarwan Singh & Ors. v. State of Punjab24 in which it was observed that in awarding compensation, it was necessary for the court to decide if the case was a fit one in which compensation deserved to be granted. Then the court considered another decision of this Court in Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. & Anr.25 wherein the court held at Page 545 of the Report as under:

> "38. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of 24 (1978) 4 SCC 111 25 (2007) 6 SCC 528 compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a Judge."

Having regard to the above legal position and the fact that the mother of the victim had no grievance against the appellant therein and she prayed for some compensation, this Court held that a lenient view could be taken in the matter and the sentence of imprisonment could be reduced and,

accordingly, reduced the sentence to the period already undergone and directed the appellant to pay compensation of Rs. One lakh to the mother of the victim.

78. World Health Organisation in the Global Status Report on Road Safety has pointed out that speeding and drunk driving are the major contributing factors in road accidents. According to National Crime Records Bureau (NCRB), the total number of deaths due to road accidents in India every year is now over 1,35,000. NCRB Report also states drunken driving as a major factor for road accidents. Our country has a dubious distinction of registering maximum number of deaths in road accidents. It is high time that law makers revisit the sentencing policy reflected in Section 304A IPC.

79. 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 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 family of victims from the constant agony. As a matter of fact, 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.

80. We are satisfied that the facts and circumstances of the case do not justify benefit of probation to the appellant for good conduct or for any reduction of sentence.

81. The appeals are, accordingly, dismissed.

Appellant's bail bonds are cancelled. He shall forthwith surrender for undergoing the remaining sentence as awarded by the High Court in the Judgment and Order dated September 6, 2007.

..... J.

(R. M. Lodha) ..... J.

(Jagdish Singh Khehar) NEW DELHI, JANUARY 12, 2012.