the experiment too far results from an obvious and dangerous misconception...It is clear, however, that if the words, 'not amounting to culpable homicide,' are a part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death.[394.]

A rash act is primarily an overhasty act and is opposed to a deliberate act; even if it is partly deliberate, it is done without due thought and caution.[395.] Illegal omission is "act" under this section and may constitute an offence if it is negligent.[396.] In this connection, see also sub-para entitled "Rash or Negligent" under section 279, IPC, 1860, *ante*.

Death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*, it is not enough that it may have been the *causa sine qua non*.[397.] This view has been approved by the Supreme Court.[398.] The Bombay High Court has said that in cases falling under this section, it is dangerous to attempt to distinguish between the approximate and ultimate cause of death.[399.] Where the accused, a motor driver, ran over and killed a woman, but there was no rashness or negligence on the part of the driver so far as his use of the road or manner of driving was concerned, it was held that the accused could not be convicted under this section on the ground that the brakes of the lorry were not in perfect order and that the lorry carried no horn. The "rash or negligent act" referred to in the section means the act which is the immediate cause of death and not any act or omission, which can at most be said to be a remote cause of death.[400.] Negligence on the part of a motorist cannot be presumed under this section by the mere fact that a man is knocked down and killed by him.[401.] To render a person liable for neglect of duty, there must be such a degree of culpability as to amount to *gross* negligence on his part. It is not every little slip or mistake that will make a man so liable.[402.] A passenger was standing on the footboard of a bus to the knowledge of the driver and even so the driver negotiated a sharp turn without slowing down. The passenger fell off to his death. The driver was held to be guilty under the section.[403.] A woman was boarding the bus from the front entrance. The conductor whistled and the driver took off speedily. Either of them could have known whether she had come in or not, but neither cared to do so. She fell off and was crushed by the rear wheel. No doubt remained in the mind that the driver and the conductor were guilty of a rash and negligent act.[404.] Intentional shooting at a fleeing person and hitting someone else to death would come under section 300 read with section 301. It is not a negligent act so as to come under section 304A.[405.]

2. 'Not amounting to culpable homicide'.—

> Section 304A is directed at offences outside the range of ss. 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge enters. For the rash or negligent act which is declared to be a crime is one 'not amounting to culpable homicide', and it must therefore be taken that intentionally or knowingly inflicted violence, directly and wilfully caused, is excluded. Section 304A does not say that every unjustifiable or inexcusable act of killing not hereinbefore mentioned shall be punishable under the provisions of this section, but it specifically and in terms limits itself to those rash or negligent acts which cause death but fall short of culpable homicide of either description.[406.]

[s 304A.3] **Doctrine of reasonable care.—**

The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when pedestrians happen

to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, maybe either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others. 'Negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence *per se* or the course of conduct amounts to negligence, will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.[407.]

[s 304A.4] **Contributory negligence.—**

The doctrine of contributory negligence does not apply to criminal liability, that is, where the death of a person is caused partly by the negligence of the accused and partly by his own negligence. If the accused is charged with contributing to the death of the deceased by his negligence, it matters not whether the deceased was deaf, or drunk, or negligent, or in part contributed to his own death.[408.] In this connection, see also sub-para entitled "Contributory negligence" under section 279, IPC, 1860, *ante*.

[s 304A.5] **Laying trap by live wire.—**

The accused had connected live wire with his bicycle with a view to ward off mischief making children. A child touched the bicycle and got shock and ultimately died. It was held that the act of the accused amounted to negligence as he placed no sign board, caution or warning for not touching the bicycle and was liable to be punished under section 304A and under section 304, Part II.[409.]

[s 304A.6] **Degree and nature of care expected of an occupier of a cinema building.—**

The Supreme Court, in *Sushil Ansal v State Through CBI*,[410.] (Uphaar Cinema building tragedy case) opined that:

> Reverting back to the degree and nature of care expected of an occupier of a cinema hall, we must at the outset say that the nature and degree of care is expected to be such as would ensure the safety of the visitors against all foreseeable dangers and harm. That is the essence of the duty which an occupier owes to the invitees whether contractual or otherwise. The nature of care that the occupier must, therefore, take would depend upon the fact situation in which duty to care arises. For instance, in the case of a hotel which offers to its clients the facility of a swimming pool, the nature of the care that the occupier of the hotel would be expected to take would be different from what is expected of an occupier of a cinema hall.
>
> An occupier of a cinema would be expected to take all those steps which are a part of his duty to care for the safety and security of all those visiting the cinema for watching a cinematograph exhibition. What is important is that the duty to care is not a onetime affair. It is a continuing obligation which the occupier owes towards every invitee contractual or otherwise every time an exhibition of the cinematograph takes place. What is equally important is that not only under the common law but even under the statutory regimen, the obligation to ensure safety of the invitees is undeniable, and any neglect of the duty is actionable both as a civil and criminal wrong, depending upon whether the negligence is simple or gross.

[s 304A.6.1] ***Mens rea***.—

The essential ingredient of *mens rea* cannot be excluded from consideration when the charge in a criminal Court consists of criminal negligence.[411.]

[s 304A.6.2] ***Res ipsa Loquitur***.—

This doctrine serves two purposes—one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is *prima facie* evidence of such negligence. Second, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The Courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. Elements of this doctrine may be stated as:

(a) The event would not have occurred but for someone's negligence.

(b) The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

(c) Accused was negligent and owed a duty of care towards the victim.[412.] In our current conditions, the law under section 304A, IPC, 1860 and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces. Thus viewed, it is fair to apply the rule of *res ipsa loquitur*, of course, with care. Conventional defences, except under compelling evidence, must break down before the pragmatic Court and must be given short shrift. Looked at from this angle, the Court held that the present case deserved no consideration on the question of conviction.[413.] The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.[414.] *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.[415.] Where a vehicle was being driven on a wrong side and an accident took place resulting in the death of two persons, the principle of *res ipsa loquitur* should have been applied.[416.] In the case of *Thakur Singh v State of Punjab*,[417.] the accused drove a bus rashly and negligently with 41 passengers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court applied the doctrine of *res ipsa loquitur* since admittedly the petitioner was driving the bus at the relevant time and it was going over the bridge when it fell down. Evidence on record discloses that the bus had gone and dashed into a standing tree situated on the right side of the road. Unless, the vehicle had been driven rashly and/or negligently, the vehicle which had no mechanical defect would not have dashed to a standing tree, that too, on the right side of the road. The factum of accident having been admitted in section 313, Cr PC, 1973 statement, the legal doctrine *res ipsa loquitur* gets attracted.[418.]

Where a vehicle driven at a high speed knocked down the deceased who was walking on the left side of the road and breaking the roadside fencing got stuck up in a ditch, it was held that the maxim *res ipsa loquitur* was applicable and the accused driver could be held guilty of rash and negligent driving.[419.]

The Supreme Court explained the principle in the following words.[420.]

> The principle of *res ipsa loquitor* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The principle has application only when the nature of the accident and attending circumstances would reasonably lead to the belief that in the

absence of negligence the accident would not have occurred and the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.

The maxim, however, was not applicable to the present case. The bus moved away while a passenger was trying to board it. He fell down to his injuries. There could be no presumption of negligence. It had to be further shown that the driver moved away the bus suddenly or before getting signal from the conductor where a car hit a tree resulting in the death of one of the passengers and injuries to others and though the road was of sufficient width and no obstruction was present and the report of the motor vehicles inspector was that there was no mechanical defect in the car, it was held that a presumption as to negligence could be drawn and the burden was on the driver to show that there was no negligence on his part.[421.]

[s 304A.7] **Accidents.—Defence of mechanical failure.—**

According to the defence, the vehicle turned turtle due to mechanical failure, i.e., non-functioning of the hydraulic system in a proper manner. The manner in which the accident occurred due to detachment of the trailer from the tractor and the distance to which the tractor moved vividly reveals that the vehicle in question was driven recklessly at a high speed. The plea of mechanical failure as put forth by the accused was not even suggested to the Inspector. Plea rejected.[422.] Accused took the plea that accident happened due to bursting of tyre of scooter. Bursting of tyre may happen only when the tube and tyre have already spent their lives or in the event of poor maintenance of same. Mechanical failure of a vehicle contributing to cause of an accident is also a factor coming under "poor maintenance". Rejecting the plea, the Orissa High Court held that poor maintenance of vehicle is itself a negligent act.[423.]

[s 304A.8] **High Speed.—**

Driving at a high speed is not in itself a negligent act.[424.] In the case of *Ravi Kapur v State of Rajasthan*,[425.] the Apex Court has observed that, a person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result and that it may not always be possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently and that even when one is driving a vehicle at slow speed, but, recklessly and negligently, it would amount to rash and negligent driving within the meaning of the language of section 279, IPC, 1860. Mere driving of a vehicle at a high speed or slow speed does not lead to an inference that negligent or rash driving had caused the accident resulting in injuries to the complainant. In fact, the speed is no criteria to establish the fact of rash and negligent driving of a vehicle.[426.] Absence of rash speed itself cannot absolve the petitioner.[427.] Where the accused came driving canter at a very fast speed in rash and negligent manner and dashed against victim girls resulting into death of one and injuries to another, relying on the testimony of complainant, Court convicted the accused under section 304A.[428.] In a case, the accused drove the vehicle ignoring the signal given to stop the bus by a police officer in uniform. There was absolutely no turn or bend on the road which could have prevented the accused from noticing the victim in uniform on road. Accident occurred on account of rash and negligent act of applicant/accused and led to death of victim. Conviction of accused was held proper by the Bombay High Court.[429.]

[s 304A.9] **Medical negligence.—**

In *PB Desai (Dr) v State of Maharashtra*,[430.],[431.] the Supreme Court held that due to the very nature of the medical profession, the degree of responsibility on the practitioner is higher than that of any other service provider. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. The essential ingredient of *mens rea* cannot be excluded from

consideration when the charge in a criminal Court consists of criminal negligence. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

[s 304A.9.1] ***Bolam Test***.—

The test for determining medical negligence as laid down in *Bolam v Friern Hospital Management Committee*,[432.] holds good in its applicability in India.[433.] In the *Bolam* case, it was held that:

> Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill... A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.

In many cases, the Supreme Court approved and applied this test for determining the negligence. In *Jacob Mathew v State of Punjab*,[434.] the Supreme Court observed:

> The water of Bolam test has ever since flown and passed under several bridges, having been cited and dealt with in several judicial pronouncements, one after the other and has continued to be well received by every shore it has touched as neat, clean and well-condensed one.

When a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal.' It can be termed 'criminal' only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.[435.] Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.[436.] In *Suresh Gupta (Dr) v Govt of NCT of Delhi*,[437.] the Apex Court held that where the medical practitioner failed to take appropriate steps, viz., "not putting a cuffed endotracheal tube of proper size" so as to prevent aspiration of blood blocking respiratory passage, the act attributed to him may be described as negligent act but not so reckless as to make him criminally liable.

[s 304A.10] **Duty of the Investigating Officer.—**

A doctor accused of rashness or negligence may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.[438.]

[s 304A.11] **Private Complaint.—**

A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.[439.] Complaint alleging Medical Negligence in treatment of husband of

complainant. In absence of any expert opinion regarding negligence of doctor, criminal prosecution against him is not maintainable.[440.]

[s 304A.12] **Burden of proof.—**

In a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence.[441.]

[s 304A.13] **Individual liability of Doctors.—**

For establishing medical negligence or deficiency in service, the Courts would determine the following:

(i) No guarantee is given by any doctor or surgeon that the patient would be cured.

(ii) The doctor, however, must undertake a fair, reasonable and competent degree of skill, which may not be the highest skill.

(iii) Adoption of one of the modes of treatment, if there are many, and treating the patient with due care and caution would not constitute any negligence.

(iv) Failure to act in accordance with the standard, reasonable, competent medical means at the time would not constitute a negligence. However, a medical practitioner must exercise the reasonable degree of care and skill and knowledge which he possesses. Failure to use due skill in diagnosis with the result that wrong treatment is given would be negligence.

(v) In a complicated case, the Court would be slow in contributing negligence on the part of the doctor, if he is performing his duties to the best of his ability.[442.]

Law relating to medical negligence laid down by the Supreme Court in Jacob Mathew Case

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Ratanlal Ranchhoddas, and Dhirajlal Keshavlal Thakore, *The Law of Torts*, 26th Edn, Bombay law reporter Office, 2013 (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions

which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in *Bolam v Friern Hospital Management Committee*,[443.] holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher, i.e., gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in section 304A of IPC, 1860, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in section 304A of the IPC, 1860 has to be read as qualified by the word 'grossly'.

(7) To prosecute a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.

[*Jacob Mathew v State of Punjab*.[444.] See also *PB Desai (Dr) v State of Maharashtra*.[445.]]

A person sustained fracture injuries in an accident. He died while he was under operation. The cause of death was found to be administration of spinal anaesthesia which was injected through spinal cord without checking the bearing capacity of the patient. It amounted to criminal negligence. The failure of the surgeons to check the state of the patient after anaesthesia might also amount to negligence, the Court said. Conviction under the section would have been proper. This would also attract civil liability. The quashing of the criminal proceedings was not a bar to institution of a civil suit.[446.]

The accused was not a qualified doctor. He administered an injection to a patient who died because the possible reaction was not tested beforehand. The Court said that the accused was guilty of causing death by rash and negligent act.[447.]

The degree of negligence sufficient to fasten liability under section 304A is higher than that required to fasten liability in civil proceedings. Non-exercise of reasonable care on the part of the doctor may suffice to fasten on him civil liability but in order to fasten criminal liability, gross negligence on his part amounting to recklessness has to be proved.[448.]

Supreme Court Guidelines in Medical Negligence Cases

On scrutiny of the leading cases of medical negligence both in our country and other countries, specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence, following well-known principles must be kept in view:

(I) Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

(II) Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

(III) The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

(IV) A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

(V) In the realm of diagnosis and treatment, there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of another professional doctor.

(VI) The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient, rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

(VII) Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

(VIII) It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

(IX) It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

(X) The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical

professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

(XI) The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

[*Kusum Sharma v Batra Hospital and Medical Research Centre*.[449.]]

[s 304A.14] **CASES.—Medical Negligence.—**

Non-providing of ambulance when attendants were shifting the patient to Trauma Centre, even if it was not asked for by them, may be an instance where there is no negligence in the treatment but may be deficiency in service or civil negligence as was held in similar circumstances in the case of *Pravat Kumar Mukherjee v Ruby General Hospital*.[450.] In a case, a Cardiac surgeon was indicted in a prosecution under section 304A on the grounds that he chose to conduct the angioplasty without having a surgical standby unit and such failure resulted in delay of five hours in conducting by-pass after the angioplasty failed; and he did not consult a cardio anaesthetist before conducting an angioplasty. According to the High Court, both the above-mentioned 'lapses' on the part of the appellant "clearly show the negligence" of the accused-surgeon. While quashing the proceedings, the Supreme Court held that the prosecution of the accused is uncalled for as pointed out by the Court in *Jacob Mathew's case (supra)* that the negligence, if any, on the part of the accused cannot be said to be "gross".[451.]

[s 304A.15] **Delegation of responsibility.—**

Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing his duties properly.[452.]

[s 304A.16] **Negligence of nurse.—**

Where the allegation that the accused nurse told the doctor that the vaccine for snake bite was not available, when it was actually available, considering the delay of two and half hours in bringing the patient to the hospital, it was held that there was no direct nexus between the rash and negligent act and death of deceased.[453.]

The accused, a Homeopathic practitioner, administered to a patient suffering from guinea worm, 24 drops of stramonium and a leaf of *dhatura* without studying its effect; the patient died of poisoning. The accused was held guilty under this section.[454.]

[s 304A.17] **Negligence on the part of the bus driver when a passenger fell down from a bus.—**

A passenger might fall down from a moving vehicle due to one of the following causes: it could be accidental; it could be due to the negligence of the passenger himself; it could be due to the negligent taking off the bus by the driver. However, to fasten the liability with the driver for negligent driving in such a situation, there should be the evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus.[455.] When

deceased was alighting from the bus, the accused driver suddenly started the bus, as a result of which, he fell down and sustained injuries. It cannot be said that driver had not seen the deceased alighting from bus—negligence and rashness is writ large. It does not require any imagination to hold that it was basic duty of driver to ascertain as to whether any passenger was boarding or alighting from bus—Conviction was held proper.[456.] Prosecution case is that when deceased, a girl studying in the 8th standard was about to board the offending bus driven by accused/ driver, he took the bus speedily and made her fall down whereby she sustained injuries and ultimately died. Conviction of both the accused driver and conductor is held proper.[457.] In another case, one person had gone on the roof top of the bus and driver started the vehicle while he was there and by falling from bus, passenger sustained injuries and succumbed in hospital. There was no evidence to show that the driver had knowledge that any passenger was on the rooftop of the bus. Supreme Court acquitted the accused.[458.]

[s 304A.18] **CASES.—Act not rash or negligent.—**

If the driver of a motor vehicle does not blow the horn because the prevailing traffic rules prohibit him from doing so, it cannot be said that he has failed to exercise reasonable and proper care, nor can it be said that duty to blow the horn was imperative upon him, so as to hold him guilty of negligence under this section.[459.] If a pedestrian suddenly crosses a road without taking note of an approaching bus, and, thus, gets killed by dashing against the bus, the driver cannot be held responsible for any rash or negligent act.[460.] Where a bus driver finding a level crossing gate open at a time when there was no train scheduled to pass, tried to cross the railway line and the rear portion of the bus collided with an oncoming goods train resulting in the death of four passengers, the driver cannot be held responsible for an offence under this section.[461.] A bus with some corrugated sheets on the roof was being driven by the accused. On the way, due to jolting, these sheets got loose and fell down on the heads of passersby, one of which later died. The investigating officer did not care to seize either those sheets and even ascertain who the owner of the bus was who actually loaded those sheets without tying them properly. It was held that the bus driver could not be held liable under this section.[462.] The accused was driving a passenger bus at moderate speed along a narrow 12' road which had deep ditches on either side of the road. When the bus reached a place where a *kaccha* road bifurcated for a nearby village, a girl of four years old suddenly ran across the road from left to right. The accused in order to save the girl swerved the bus to the right to the extent possible but still the left wheel hit the girl and she died on the spot. In setting aside his conviction under this section, the Supreme Court held that it was a case of pure error of judgment and not a rash or negligent act. It further held that the doctrine of *res ipsa loquitur* (i.e., let thing speak for itself) had no application in a criminal case.[463.]

Where the bus conductor whistled the bus to start only after he had seen each and every passenger had got out of the bus, but a passenger was injured because he had slipped and not because the bus suddenly started moving, the conductor was given the benefit of doubt.[464.] Where the charge that the driver started the bus without waiting for signal from the conductor and as a result a passenger who was still at the roof of the bus for bringing down his luggage fell down to death, the Court was of the opinion that because the conductor was not examined as a witness and without his evidence, the case was nothing but a version of the prosecution and, therefore, the conviction of the driver was set aside.[465.] Accused who was trying to overtake other vehicles and in that process took his vehicle completely on the wrong side of the road, giving a dash to a scooterist resulting in his death. Conviction of appellant under section 304A of IPC, 1860 was held proper.[466.]

[s 304A.19] **Accidents in Construction sites.**