Supreme Court of India
Sushil Ansal vs State Thr.Cbi on 5 March, 1947
Author: .....J.
Bench: T.S. Thakur, Gyan Sudha Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICITION

CRIMINAL APPEAL NO.597 OF 2010

Sushil Ansal …Appellant

Versus

State Through CBI …Respondent

(With Crl. Appeals No.598/2010, 599/2010, 600-602/2010, 604/2010, 605-616/2010 and 617-627/2010)

J U D G M E N T

T.S. THAKUR, J.

Enforcement of laws is as important as their enactment, especially where such laws deal with safety and security of citizens and create continuing obligations that call for constant vigil by those entrusted with their administration. Callous indifference and apathy, extraneous influence or considerations and the cynical "Chalta Hai" attitude more often than not costs the society dearly in man-made tragedies whether in the form of fire incidents, collapse of buildings and bridges, poisonous gas leaks or the like. Short-lived media attention followed by investigations that at times leave the end result flawed and a long winding criminal trial in which the witnesses predecease their depositions or switch sides under pressure or for gain and where even the victims or their families lose interest brings the sad saga to an uncertain end. A somewhat similar story is presented in these appeals by special leave arising out of a common judgment and order dated 19th December, 2008 passed by a Single Judge of High Court of Delhi whereby a batch of criminal appeals filed by those convicted by the trial Court for commission of different offences and the sentences awarded to them were disposed of alongwith criminal revision petition no.17 of 2008 filed by the Association of Victims of Uphaar Tragedy (hereinafter, "AVUT") that led to the death of 59 persons besides injuries to nearly 100 others.

2. The High Court has, on a reappraisal of the evidence adduced at the trial, acquitted five of the appellants before it while upholding the convictions of the rest with or without modification of the nature of offence in some cases and reduction of the sentence in others. We shall in the course of this judgment refer in detail to the view taken by the Trial Court and the extent and nature of modification made to that by the High Court in the impugned judgment.

3. Suffice it to say that the fire incident that claimed valuable human lives took place in the heart of the capital city of Delhi in a cinema building situate in its posh Green Park Extension area on 13th June, 1997. The factual backdrop in which the unfortunate victims lost their lives or suffered injuries has been set out by the Trial Court in its judgment and reiterated by the High Court in the order passed by it without any significant changes in the narrative. In the Trial Court, as in the High Court and even before us there was no serious dispute as to the cause of the fire leading to the loss of human lives. We, therefore, would remain content with the broad narration of the facts as are available from the order passed by the Trial Court and that passed by the High Court, which are as under:

The Incident:

4. Uphaar Cinema building, situate on a plot of 2480 square yards at Green Park Extension Shopping Centre, New Delhi, comprised a cinema auditorium with a sanctioned capacity of 750 seats besides a balcony with a sanctioned capacity of 250 seats. The cinema auditorium comprised the first floor of the cinema complex while the balcony was constructed on the second floor. The ground floor of the building comprised a parking lot besides three separate rooms on the western side, one of which was used for placing a 500 KVA electric transformer that supplied electric energy to the cinema theatre while the other was used for housing a 1000 KVA transformer that was installed and maintained by the Delhi Vidyut Board (hereinafter referred to as “DVB”). It is common ground that the second transformer even though located within the cinema premises, did not supply electricity to the cinema but rather to some of the tenants occupying parts of the commercial complex that formed a part of the building and some other consumers from the locality.

5. The prosecution case is that on 13th June, 1997 at about 6.55 a.m. the bigger of the two transformers installed and maintained by DVB on the ground floor of the Uphaar Cinema building caught fire. The fire was brought under control by 7.25 a.m. Inspection of the transformer by the Superintendant of the DVB and his team revealed that three of the low tension cable leads of the transformer had been partially burnt. At about 10.30 a.m., B.M. Satija (A-9) and A.K. Gera (A-10), Inspectors from DVB along with Senior Fitter, Bir Singh (A-11) conducted repairs on the transformer by replacing two aluminium sockets on the B-Phase of the low tension cable leads. The repairs, it appear, were carried out with the help of a dye and hammer without the use of a crimping machine. The transformer was recharged for resumption of electric supply by 11.30 a.m. on 13th June, 1997.

6. The prosecution alleges that repairs conducted on the transformer in the earlier part of the day were unsatisfactory and resulted in loose connections that caused sparking on the B-Phase of the transformer where such repairs were carried out. This resulted in the loosening of one of the cables

of the transformer which eventually came off and started dangling loose along the radiator and burnt a hole in the radiator fin. Through this hole the transformer oil started leaking out which, on account of the heat generated by the loose cable touching against the radiator, ignited the oil at about 4.55 p.m. on 13th June, 1997. Since the transformer did not have an oil soak pit as required under the regulations and the standard practice, the oil that spread out of the enclosure continued leaking and spreading the fire to the adjacent parking lot where cars were parked at a distance of no more than a metre from the door of the transformer. The result was that all the cars parked in the parking area on the ground floor of the cinema hall were ablaze. Smoke started billowing in the northern and southward directions in the parking lot of the cinema complex. The northern bound smoke encountered a gate which was adjacent to a staircase leading to the cinema auditorium on the first floor. Due to chimney effect, the smoke gushed into the stairwell and eventually entered the cinema auditorium through a door and through the air conditioning ducts. The southward bound smoke similarly travelled aerially through another staircase and into the lower portion of the balcony of the auditorium from the left side. All this happened while a large number of people were seated in the auditorium enjoying the matinee show of 'BORDER', a popular Hindi movie with a patriotic theme. Because of smoke and carbon monoxide released by the burning oil and other combustible material, the people in the auditorium started suffocating.

7. The Shift In-charge of the Green Park Complaint Centre of DVB received a telephonic message from K.L. Malhotra (A-4), since deceased, who was the Deputy General Manager of Uphaar Cinema at the relevant point of time, regarding the fire. It was only then that the AIIMS grid to which the transformer in question was connected was switched off and the flow of energy to the cinema complex stopped. According to the prosecution the supply of the 11 KV outgoing Green Park Feeder tripped off at 5.05 p.m. thereby discontinuing the supply of energy to the cinema.

8. Inside the auditorium and balcony there was complete pandemonium. The people in the balcony are said to have rushed towards the exits in pitch darkness as there were neither emergency lights nor any cinema staff to help or guide them. The prosecution alleged that no public announcement regarding the fire was made to those inside the auditorium or the balcony, nor were any fire alarms set off, no matter the management and the employees of the Uphaar Cinema were aware of the fact that a fire had broken out. Even the Projector Operator was not given instructions to stop the film while the fire was raging nor was any patron informed about the situation outside. On the contrary, the doors to the middle entrance of the balcony were found to be bolted by the gatekeeper-Manmohan Uniyal (A-8) who had left his duty without handing over charge to his reliever. More importantly, the prosecution case is that the addition of a private 8- seater box had completely closed off the exit on the right side of the balcony, while the addition of a total of 52 extra seats over the years had completely blocked the gangway on the right side of the balcony. Similarly, the gangway on the right of the middle entrance was significantly narrower than required under the regulations. It was alleged that Sushil Ansal (A-1) and Gopal Ansal (A-2), the owners of the cinema hall, had knowledge of these deviations from fire safety norms despite which they had continued exhibiting films, thereby endangering the lives of all those who patronized the theatre. All these obstructions, deviations, violations and deficiencies had, according to the prosecution, resulted in the victims getting trapped in the balcony for at least 10-15 minutes exposing them to lethal carbon monoxide, to which as many as 59 persons eventually succumbed.

9. Rescue operations attempted by the fire tenders from the Bhikaji Cama Place and Safdarjung Fire Stations were undertaken after the Delhi Fire Service received a complaint from K.L. Malhotra (A-4), since deceased, at 5.10 p.m. The fire tenders took nearly forty five minutes to one hour to extinguish the fire and to rescue the persons trapped in the balcony by opening the bolted doors and taking those who had collapsed and those injured to the hospitals. No one from the staff or management of the theatre was, according to the prosecution, present at the spot to lend a helping hand in the rescue operations.

Investigation and Charges:

10. Investigation into the fire incident and the resultant causalities started pursuant to FIR No.432/97 registered at Police Station, Hauz Khas on the basis of a written complaint filed by one Sudhir Kumar, Security Guard, employed by the management of the cinema complex. The investigation was initially conducted by the Delhi Police but was soon thereafter transferred to the Crime Branch and eventually to the Central Bureau of Investigation under the Delhi Special Police Establishment Act, 1946. The CBI registered case bearing No.RC-3(S)/97/SIC.IV/New Delhi on 25th July, 1997.

11. The investigating agencies first looked into the incidents of fire and got prepared and seized the record relevant thereto, including a report signed by B.M. Satija (A-9), A.K. Gera (A-10), Inspectors and Bir Singh (A-

11) Senior Fitter, which dealt with the nature of repair that was conducted on the DVB transformer after the first incident. The investigating agencies also looked into the chain of events that led to the second fire at around 5.00 p.m. and the entry of smoke into the cinema auditorium and the balcony. A report from the Central Building Research Institute was also obtained by the investigating agencies on 17th August, 1997 under the signatures of T.P. Sharma (PW-25). Expert opinion of K.V. Singh, Executive Engineer (Electrical), PWD was also obtained by the investigating officers on 29th June, 1997, in addition to two CFSL reports prepared by Dr. Rajender Singh forwarded to the Hauz Khas Police Station on 27th June, 1997 and to the CBI on 11th August, 1997. These reports were marked Exs. PW 64/B and PW 64/D at the trial.

12. The investigating officers also examined the cause of malfunctioning of the DVB transformer and obtained a report Ex. PW24/A in that regard from Mr. K.L. Grover, Electrical Inspector and Mr. A.K. Aggarwal, Assistant Electrical Inspector on 25th June, 1997. The report obtained from Professor M.L. Kothari of IIT, New Delhi, on 2nd July, 1997 analysed and attributed the cause of fire to malfunctioning of the DVB transformer.

13. The investigating agencies then looked into the fire safety deviations in the Uphaar Cinema building to determine whether the same had contributed to the fire and hindered the escape of those seated in the cinema auditorium and balcony from the poisonous carbon monoxide that had polluted the atmosphere inside the complex. Reports from Executive Engineers, MCD were also obtained in this regard. A Panchnama depicting floor-wise deviations in the Uphaar Cinema building and an Inspection-cum- Scrutiny report marked as Ex.PW 2/A indicating the structural

deviations was also submitted by the MCD to the CBI on 11th August, 1997.

14. Similarly, the investigating agencies collected a fire report marked Ex. PW 49/E from the Delhi Fire Service regarding the rescue operations conducted by the fire service personnel on the date of the occurrence.

15. Post-mortem conducted on the dead body of Captain M.S. Bhinder, one of the unfortunate victims, revealed that the cause of death was asphyxiation. From the report of Dr. T.D. Dogra, Forensic Expert, obtained on 18th September, 1997, the investigating officers concluded that the rapid death of the victims could have been caused by inhalation of a combination of toxic gases including carbon monoxide and sulphur dioxide which were produced by combustion of articles like diesel, petrol, rubber and styrene.

16. Statements of a large number of witnesses relevant to the fire incident, its causes and effects were also recorded by the investigating agencies from time to time culminating in the filing of a common chargesheet against 16 persons accusing them of commission of several offences punishable both under the Indian Penal Code, 1860 as also under the provisions of the Cinematograph Act, 1952. What is important is that while accused A-1, A-2, A-12, A-13 and A-14 were charged with commission of offences punishable under Sections 304A, 337, 338 read with Section 36, IPC and Section 14 of the Cinematograph Act, 1952, accused A-3 to A-8 comprising the management and gatekeeper of the Cinema were charged with commission of offences punishable under Sections 304, 337, 338 read with Section 36, IPC and Section 14 of the Cinematograph Act, 1952. The employees of DVB namely Inspectors B.M. Satija (A-9), A.K. Gera (A-10) and Senior Fitter, Bir Singh (A-11) were also charged with the commission of offences punishable under Sections 304, 337 and 338 read with Section 36 of the IPC. As regards the remaining three accused namely, N.D. Tiwari (A-

14), H.S. Panwar (A-15) and Surender Dutt (A-16), they were charged with commission of offences punishable under Sections 304A, 337, 338 read with Section 36 of IPC.

17. Since some of the offences with which the accused persons were charged were triable by the Court of Sessions, the case was committed for trial to Additional Sessions Judge, New Delhi, who framed specific charges against Sushil Ansal (A-1), Gopal Ansal (A-2) and the rest of the accused.

18. Sushil Ansal (A-1) and Gopal Ansal (A-2), who happen to be brothers, were charged with offences punishable under Sections 304A read with Section 36 and Sections 337 and 338 read with Section 36 IPC for their negligent acts of omission and commission of allowing installation of the DVB transformer, various structural and fire safety deviations in the building in violation of various Rules and not facilitating the escape of patrons which caused the death of 59 persons and simple and grievous injuries to 100 others in the fire incident mentioned above. They were also charged under Section 14 of the Cinematograph Act, 1952 for contravention of the provisions of the Delhi Cinematograph Rules, 1953 (hereinafter referred to as 'DCR, 1953') and Delhi Cinematograph Rules, 1981 (hereinafter referred to 'DCR, 1981').

19. Managers, R.M. Puri (A-3), since deceased, K.L. Malhotra (A-4) since deceased, R.K. Sharma (A-5) since deceased, N.S. Chopra (A-6), Ajit Choudhary (A-7), since deceased and Manmohan Uniyal (A-8), gatekeeper were also charged with commission of offences punishable under Section 304 read with Section 36 of IPC since, despite being present at the time of the fire incident, they failed to inform, alert and facilitate the escape of the patrons from the balcony during the fire while knowing fully well that their act was likely to cause death or such bodily injuries as was likely to cause death.

20. Similarly, B.M. Satija (A-9), A.K. Gera (A-10) and Bir Singh (A-11) were charged with commission of offences punishable under Section 304 read with Section 36 IPC in that they had not used the required crimping machine while repairing the DVB transformer after the first fire incident on 13th June, 1997 knowing fully well that this could and did cause the transformer to catch fire once again and result in the death or bodily injury as was likely to cause death of persons in the building.

21. The rest of the accused persons namely, S.N. Dandona (A-12) since deceased, S.S. Sharma (A-13), N.D. Tiwari (A-14), H.S. Panwar (A-15) and Surender Dutt (A-16) since deceased, were charged with offences punishable under Sections 304A, 337 and 338 IPC read with Section 36 IPC for causing the death of 59 persons and simple and grievous injuries to 100 others by their acts and omissions of negligently issuing No Objection Certificates to Uphaar Cinema without ensuring that the statutory requirements for fire safety and means of escape were adhered to.

22. All the accused persons pleaded not guilty to the charges framed against them and claimed a trial. Not only that, all of them filed writ petitions before the Delhi High Court against the order framing charges passed by the Trial Court which were dismissed by the High Court in terms of four separate orders passed by it. A Special Leave Petition filed against the order of dismissal of the writ petition by Sushil Ansal (A-1) was dismissed as withdrawn by an order of this Court dated 12th April, 2002.

Evidence at the Trial:

23. At the trial the prosecution examined as many as 115 witnesses in support of its case apart from placing reliance upon nearly 893 documents marked in the course of the proceedings. The oral evidence adduced broadly comprised depositions of witnesses whom providence helped to escape alive from the cinema complex on the fateful day. These witnesses narrated the events inside the cinema hall and the confusion that prevailed after people started suffocating because of smoke entering from in front of the screen and through the AC ducts before the hall was eventually plunged into darkness, leaving the people inside trapped without any emergency lights or help coming from any quarter. Those in the balcony found that they could not escape since all the doors were locked. The depositions comprising Kanwaljeet Kaur (PW-1), Karan Kumar (PW-3), Rishi Arora (PW-7), Amit (PW-

8), Hans Raj (PW-11) and Satpal Singh (PW-12) gave graphic accounts of the situation that prevailed inside the cinema hall and the rescue operations after the Fire Brigade arrived to help them out.

24. The evidence also comprised the depositions of Neelam Krishnamoorthy (PW-4), Ajay Mehra (PW-5), Harish Dang (PW-6), Satish Khanna (PW-9), Kishan Kumar Kohli (PW-10), Raman Singh Sidhu (PW-13) and Surjit Singh (PW-66) relatives of some of the victims, who narrated their travails and proved the death certificates of those lost in the tragedy. Neelam Krishnamoorthy (PW-4) happens to be the unfortunate mother of two who were seated in the rightmost two seats in the front row of the balcony.

25. Some of the onlookers and others who helped in the rescue operations were also examined by the prosecution apart from the officers of the Delhi Fire Service. R.C. Sharma (PW-49) Chief Fire Officer, testified to the presence of smoke in the stairwell and the balcony and stated that he could not open the balcony door until he received help of two other officers. Depositions of B.L. Jindal (PW-15) and Ram Kumar Gupta (PW-17) who happened to be the Assistant Engineer and Junior Engineer respectively of the MCD were also recorded. A large number of 14 witnesses were examined to prove the structural deviations in the building upon an inspection conducted after the fire incident. An equally large number of 33 witnesses were examined to prove documents relied upon by the prosecution. Witnesses were also examined to prove the sanction orders issued by the competent authority to prosecute some of the accused who happened to be public servants. Evidence regarding the ownership, management and administration of the company which owned Uphaar Cinema, M/s Green Park Theaters Associated (P) Ltd. was also adduced.

26. Medical evidence led at the trial comprised the deposition of Dr. T.D. Dogra (PW-62) who proved the death certificates of 41 victims in which the cause of death was stated to be suffocation. In addition, Dr. S. Satyanarayan (PW-77) who conducted the post-mortem on the dead body of Captain M.S. Bhinder was also recorded. Officials from DVB and those connected with the investigation too were examined by the prosecution before closing its case.

Findings of the Trial Court:

27. The Trial Court appraised the evidence led at the trial including the depositions of three defence witnesses, one each, examined by H.S. Panwar (A-15), Bir Singh (A-11) and A.K. Gera (A-10) and recorded findings and conclusions that may be summarized as under:

(a) That Uphaar Cinema was owned by a company that was closely held by Sushil Ansal (A-1) and Gopal Ansal (A-2) and other members of their family and that several violations regarding the installation of a transformer and the seating arrangement in the balcony, structural deviations in the building were committed while Sushil Ansal (A-1) and Gopal Ansal (A-2) were either Directors or the Managing Directors of the said company. Even after the alleged resignation of the Ansal brothers in the year 1988 they continued to be in control of the management of the cinema and the running of its day-to-day affairs, including exercising control over the Managers and other staff employed.

(1) In coming to that conclusion, the Trial Court relied upon both documentary and oral evidence adduced before it by the prosecution. The Trial Court found that application dated 2nd February, 1973 made to the erstwhile DESU for grant of electricity connection for Uphaar Cinema was signed

by Sushil Ansal (A-1). So also letter dated 2nd February, 1973 by which the company had agreed to give DESU two rooms for their transformer and HT and LT panels at a nominal rent of Rs.11/- per year was signed by Sushil Ansal (A-1). The fact that the original licence granted to Uphaar Cinema was granted in favour of M/s Green Park Theatres Associated (P) Ltd. (in short, "GPT") through Sushil Ansal (A-1) as the Managing Director at that time, as also the fact that Sushil Ansal (A-1) continued to be representative licensee for the cinema was also relied upon by the Trial Court in support of its conclusion that Sushil Ansal (A-1) exercised control and management over Uphaar Cinema at the relevant point of time. Reliance was also placed by the Trial Court upon letter dated 19th June, 1974 written on behalf of GPT by Sushil Ansal (A-1) whereby the Entertainment Officer was requested to permit the owner to lease out the top floor of Uphaar Cinema for office use and the ground floor for commercial establishments. An affidavit dated 21st March, 1975 and letter dated 2nd April, 1979 filed in connection with renewal of the cinema license were also relied upon by the Trial Court to show that Sushil Ansal (A-

1) was not only the licensee of Uphaar Cinema, but also that he had held himself out in that capacity before the concerned authorities. Letter of authority authorizing V.K. Bedi, Architect, to deal, discuss, explain and make corrections in the building plan as well as to collect the sanction plan on his behalf as also reply to show-cause notice dated 11th May, 1981 issued by the Deputy Commissioner of Police (Licensing) [in short, "DCP (L)"] which too was sent by Sushil Ansal (A-1) as licensee for GPT were relied upon by the Trial Court to buttress its conclusion that Sushil Ansal (A-1) was the person exercising control over the affairs of the cinema and its Managing Director.

(2) The Trial Court noted that although Sushil Ansal (A-1) had resigned from the Directorship of the company on 17th October, 1988, he had continued to be the licensee of the cinema as is evident from an affidavit dated 3rd March, 1992 (Ex. PW50/B) addressed to DCP (L) seeking renewal of the license for the years 1992-93. In the said affidavit the Trial Court observed that Sushil Ansal (A-1) clearly mentioned that he continued to be the occupier of the licensed premises and the owner of the Cinematograph. Minutes of the meeting of the Board of Directors held on 24th December, 1994 were also noticed by the Trial Court to show that although Sushil Ansal (A-1) resigned from the Directorship of the company in 1988 he had continued to be involved in the affairs of the cinema, no matter in the capacity of a Special Invitee. Reliance was also placed by the Trial Court upon the inspection proformas of the Delhi Fire Service for the years 1995-1997 to show that Sushil Ansal (A-1) continued to be shown as licensee of Uphaar Cinema.

(3) The Trial Court placed reliance upon the financial authority and the control exercised by Sushil Ansal (A-1) in the affairs of the cinema hall. In this regard the Trial Court referred to a self-cheque (Ex.PW91/B) dated 26th June, 1995 for a sum of rupees fifty lakhs drawn by Sushil Ansal (A-1) from the accounts of GPT. Closer to the date of occurrence, the Board of Directors of the company had on 25th March, 1996 passed a resolution authorising Sushil Ansal (A-1) to operate the bank accounts of the company upto any amount. The Trial Court also relied upon other circumstances to support its conclusion that although Sushil Ansal (A-1) claims to have resigned from the Directorship of the company in the year 1988, he continued to be the heart and soul of the company and in complete management of the cinema affairs. Reliance was also placed upon Ex. PW103/XX3 by which Sushil Ansal (A-1) was appointed authorized signatory to operate the Current Accounts with various banks.

(4) The Trial Court similarly referred to and relied upon several pieces of documentary evidence in holding that Gopal Ansal (A-2) also exercised extensive control over the affairs of the cinema. The Court, in particular, relied upon the resolution of the Board of Directors passed on 15th July, 1972 (Ex.PW103/XX) according to which Gopal Ansal (A-2) was authorised to sign all documents, drawings and other connected papers regarding the submission of revised plans, applications for electricity connections concerning Uphaar Cinema, etc. Letter dated 24th May, 1978 (Ex. PW110/AA20), addressed by Gopal Ansal (A-2) as Director, GPT seeking permission to install an eight- seater box and reply dated 6th December, 1979 to the show-cause notice for removal of one hundred extra seats after withdrawal of the 1979 resolution which was signed by Gopal Ansal (A-2) as Director of GPT were also relied upon by the Trial Court. Similarly, letter dated 29th July, 1980 addressed to DCP(L) for the installation of fifteen additional seats in the balcony was found to have been written by Gopal Ansal (A-2) as Director, GPT. Reply to the show-cause notice dated 28th May, 1982 was similarly found to have been given by Gopal Ansal (A-2) as Director of GPT in which he tried to explain the reasons for the bolting of doors from the inside during exhibition of a film and gave assurance that the utmost precaution would be taken by the management in future. The Trial Court also relied upon the fact that the car parking contract was granted by Gopal Ansal (A-2) as Director of GPT in April, 1988.

(5) The Trial Court further relied upon the Minutes of the Meeting held on 25th March, 1996 of the Board of Directors of the company appointing Gopal Ansal (A-2) as authorised signatory upto any amount to operate the bank accounts. Cheques issued by Gopal Ansal (A-2) subsequent to the said authorisation in favour of the Chief Engineer (Water) and in favour of the Music Shop from the accounts of GPT which later was rechristened as Ansal Theaters & Clubotels (P) Ltd. were also relied upon by the Trial Court in support of its conclusion that Gopal Ansal (A-2), like his brother Sushil Ansal (A-1), even after resigning from the Directorship of the company, continued to exercise control over the affairs of the cinema complex. This was, according to the Trial Court, evident from the fact that Gopal Ansal (A-2) was appointed authorised signatory to operate the current accounts, as was the case for Sushil Ansal (A-1) also.

(6) Last but not the least, the Trial Court relied upon the Minutes of the Meeting dated 27th February, 1997 (Ex. PW98/X4) in which Gopal Ansal (A-2), described as “MD” of the company, is said to have desired that not even a nail be put in the cinema premises without his prior permission. Similarly, in the Minutes of the MD Conferences dated 2nd April, 1997 and 1st May, 1997, Gopal Ansal (A-2), described as “MD in Chair”, issued instructions in this capacity regarding a large number of business decisions and day-to-day affairs of the company. The Trial Court held that Gopal Ansal (A-2) was proved to be MD in Chair by letters marked (Ex. PW98/X-2) and (Ex. PW98/X-3). He was also shown to be “MD in Chair” for the MD Conference held on 7th May, 1997 in terms of letter dated 9th May, 1997 marked Ex. PW98/X-C.

(b) That a 750 KVA DVB transformer was installed in the cinema premises in complete violation of the Electricity Rules and in breach of the sanctioned plan for the building.

(1) The Trial Court found that the sanctioned plan marked Ex. PW15 Y/3 provided for three adjacent rooms on the ground floor each measuring 20x10 feet to be used for installation of a transformer.

The first of these three rooms was to be used for HT cables that would bring high voltage current from the AIIMS Grid Station. The second room was to be used for installing the transformer that would step down the high density current and transmit the same to the third room which was meant for LT cables from where the current would then be supplied to the cinema building.

(2) Relying upon the report submitted by Mr. K.L. Grover (PW-24), the Electrical Inspector, the Trial Court concluded that it was essential for the management of the cinema to obtain permission from the Licensing Department as also from the Municipal Corporation of Delhi (in short, "MCD") prior to the installation of the said transformer. Instead of doing so, the internal positioning of the walls of the transformer area comprising the three rooms mentioned above was changed without so much as notifying the MCD about the said change or obtaining its sanction for the same. Reliance was, in this regard, placed by the Trial Court upon the depositions of R.N. Gupta, Executive Engineer, MCD (PW-2) and Shri K.L. Grover, Electrical Inspector (PW-24).

(3) The Trial Court also looked into the Rules regarding installation of transformers in the Bureau of Indian Standard: 10028 (Part II) - 1981 and the Building Bye Laws, 1983 to hold that the installation of the transformer in question did not adhere to the following three distinct requirements under the rules:

> (i) The two transformers namely one installed by the management of the company owning the cinema and the other installed by the DVB were not separated by a fire resistant wall as required in Para 3.6.2, IS: 10028 (Part II) – 1981.
>
> (ii) The transformers did not have oil soak pits necessary for soaking the entire oil content in the transformers as required in Paras 3.6.3 and 3.6.4, IS: 10028 (Part II) - 1981.
>
> (iii) The rooms where the transformers were kept did not have proper ventilation and free movement of air on all four sides of the transformers, nor were adequately sized air inlets and outlets provided to ensure efficient cooling of the transformers as required in Paras 7.3.1.1 and 7.3.1.4, IS: 10028 (Part II) – 1981.

(4) Having said so, the Trial Court rejected the contention urged on behalf of the Ansal brothers (A-1 and A-2) that they were coerced into providing space for the DVB transformer by the DVB authorities. The Court found that correspondence exchanged between GPT and the DVB authorities did not suggest that the Ansals were forced to provide space for the DVB transformer as contended by them.

(c) That the condition of the DVB transformer was wholly unsatisfactory and that the fire had started on account of the sparking of the loose connection of the cable and socket of the bar of the said transformer.

(1) Relying upon the depositions of K.L. Grover, the Electrical Inspector (PW-24), T.P. Sharma, CBRI Expert (PW-25), K.V. Singh, Executive Engineer (Electrical), PWD (PW-35), Professor M.L.

Kothari from IIT (PW-36) and Dr. Rajinder Singh, Sr. Scientific Officer, CFSL, (PW-64), as well as their respective inspection reports, marked Ex. PW24/A, Ex. PW25/A, Ex. PW35/A, Ex. PW36/A and Ex. PW64/B, the Court held that the condition of the DVB transformer was wholly unsatisfactory on account of the following:

> i) The transformer did not have any protection system as required by the Electricity Act.
>
> ii) The terminals on the LT side were not enclosed in a box, unlike in the case of the Uphaar transformer.

iii) The LT side cables from the bus bar lacked any kind of clamping system or support for the cables.

iv) There was no relay system connected to the HT Panel board of the DVB transformer which could have tripped in case of any fault.

v) The check nut of the neutral terminal was found to be loose.

vi) There were earth strips lying in the transformer room but these were not properly joined.

vii) The connection between earth and neutral was also broken.

viii) The LT Panel's outgoing switches did not have fuses.

ix) No HRC (High Rupture Capacity) fuses were found and use of wires, in lieu of it was not proper.

x) All the four oil circuit breakers were completely unprotected against earth faults and over current.

xi) The potential transformer was found to be in the disconnected condition of the OCB operation mechanism. Its battery and charger were also found to be defective and heavily damaged in the fire.

(2) The Court further held that fire in the DVB transformer had resulted on account of the sparking by the loose connection of the cable end socket of the bus bar of the DVB transformer. The cable end socket of the B-phase bus bar was unsatisfactorily repaired since it was fixed by hammering and not by using a crimping machine. The LT cable got disconnected from the cables on the B-phase and made a hole in the radiator fin when the live conductor of the disconnected cable fell upon it. Transformer oil gushed out of the opening on to the floor, while continued short circuiting of the cable with the radiator fin in the absence of a protection relay system caused sparking, which in turn resulted in the oil from the transformer catching fire. The sparking would have continued for a significant amount of time since there was no immediate tripping system available in the HT panel. Tripping was ultimately found to have taken place at the 33 KV sub- station at AIIMS. The main switch from the generator which was going to the AC blower was found to be fused. The fuses were found to be inside the body of the switch. The condition of dust covered fuses suggested that they

had been out of use for a long time.

(d) That the parking of extra cars and the parking of cars close to the transformer in what was meant to be a 16 ft. wide passage for free movement of the vehicles aggravated the situation and contributed to the incident. The Trial Court found that apart from petrol and diesel cars, CNG gas cylinders and upholstery comprising combustible material emitted smoke when burnt containing carbon monoxide, carbon dioxide and other hydrocarbons which resulted in suffocation of those inside the balcony of the cinema.

(1) The Trial Court held that the management of the cinema had disregarded the requirements of law and the sanctioned plan, thereby putting the lives of the patrons at risk. The Court found that there was nothing on record to show that the Ansal brothers (A-1 and A-2) or the Managers of the cinema for that matter had impressed upon the contractor appointed by them the legal and safety requirements of maintaining a safe distance between vehicles and the transformer room when they entered into a parking contract in the year 1988. This, according to the Court, was gross negligence that contributed to the death of a large number of patrons and injuries to many more. The Trial Court in support of that conclusion relied primarily upon the following pieces of evidence:

> i) The sanctioned plan for the ground/stilt floor of the Uphaar Cinema building as also the report of R.N. Gupta, Executive Engineer, MCD (PW-2), according to which the provision for parking of fifteen cars was made on the said floor. The plan also earmarked a 16 feet wide passage to be maintained alongside the transformer rooms for the easy maneuvering of vehicles.

(ii) The deposition of R.K. Sethi (PW-56), the parking contractor, proved that cars were parked at a distance of no more than 3-4 feet from the transformer room. On the fateful day parking tokens had been issued for 18 cars for the matinee show, apart from 8-10 office cars that were parked in the parking lot.

(iii) The deposition of K.V. Singh, Executive Engineer (Electrical), PWD (PW-35) and the report marked Ex.PW35/A which proved that the fire situation had been aggravated due to the presence of petrol and diesel in the fuel tanks of the vehicles parked in front of the transformer rooms.

(iv) Local Inspection Note of the place of incident prepared by the Trial Court which supported the conclusion that cars had been parked in close proximity to the transformer room and that the same were burnt in the incident.

(2) Absence of proper care on the part of the management in ensuring that only the permissible number of vehicles were parked in the parking area and that a 16 ft. wide passage remained free from any obstruction were held by the Trial Court to be acts of gross negligence on the part of the management, endangering the lives of the patrons visiting the cinema and contributing to the magnitude of the hazardous gases that eventually led to the death of a large number of innocent victims.

(e) That there were several structural deviations in the cinema building apart from a rear wall behind the HT/LT room that was found to be constructed up to a height of 12 feet even though it was sanctioned only up to a height of 3 feet.

(1) Relying upon the deposition of B.S. Randhawa, ASW, PWD (PW-29) and Ex. PW29/A, the panchnama/report of floor-wise deviations prepared by him along with Dalip Singh, Executive Engineer, PWD and Prithvi Singh, DSP, the Court held that the construction of the rear wall beyond 3 feet had affected the ventilation in the area and obstructed the dispersal of smoke in the atmosphere. The Court rejected the contention that PW-29 had been tutored since he had made no mention of the obstruction of smoke in the report, Ex. PW29/A. The Court found that his testimony had been corroborated by the sanctioned plan Ex. PW15/Y-3, which too only allowed a wall upto a height of 3 feet.

(2) Similarly, the Court found certain other structural deviations in the cinema building some of which contributed to the fire, smoke and obstruction of escape claiming human lives by asphyxia. The Court in this regard placed reliance upon Ex. PW17/D, the report prepared by R.K. Gupta, Junior Engineer, MCD (PW-17) and the deposition of R.S. Sharma (PW-18) and Vinod Sharma (PW-20). The Court also placed reliance upon Ex. PW2/A which happened to be the inspection-cum- scrutiny report dated 2nd August, 1997 submitted by the MCD Engineers depicting floor-wise deviations and deposition of R.N. Gupta, Executive Engineer, MCD (PW-2) in that regard. Reliance was also placed upon the depositions of R.K. Bhattacharaya (PW-39) and the inspection note prepared by the Trial Court based on its inspection on the spot as per the direction of the High Court. Based on the said evidence the Trial Court enumerated the following structural deviations in the Uphaar Cinema building:

Basement

(i) A 12' X 20' room was constructed adjoining the staircase.

(ii) A 26' X 20' room was constructed adjoining the blower room.

(iii) A wooden store with wooden partitions was being used.

(iv) One 40' long and one 20' long brick wall were constructed and old seats were found partially filling the space between them. Ground Floor/Stilt Floor

i) A 20' X 9' Homeopathy Dispensary was constructed above the ramp, behind the transformer room.

ii) Behind the HT, LT and transformer rooms, the outer wall was built up from a height of 3' to the height of the first floor.

iii) Though externally unchanged, the partitions between the HT, LT and transformer rooms were shifted to alter the rooms' internal sizes.

iv) A 14' X 7' room adjoining the HT room was being used as a ticket counter.

v) A 20' X 20' ticket foyer was converted into Syndicate Bank. Sanjay Press Office was found in place of the restaurant on the front side.

vi) A mezzanine floor was constructed using R.S. Joists of timber, at a height of 8' above the stilt floor, to be used as offices. This was completely burnt in the fire.

vii) A small construction was made using RCC slabs on the mid landing of the staircase at a height of 8' above the stilt floor to be used as offices.

viii) M/s Sehgal Carpets was occupying a partition of the staircase leading to the basement around the lift well.

Foyer/First Floor

(i) A refreshment counter was found constructed between the expansion joint and the staircase.

(ii) A second refreshment counter was constructed near the rear exit gate, 10'9'' away from the auditorium exit gate.

Mezzanine Floor/Balcony

(i) A refreshment counter covering 21' X 9' was found between the doors of the toilet and the staircase.

(ii) An office room was constructed in place of the sweeper room and adjoining toilets.

(iii) The operator room was converted into an office-cum-bar room.

(iv) A door of full width on the right side of the staircase landing between the Projection Room floor and the loft floor was found to be obstructing the path to the terrace.

(v) Sarin Associates' reception counter was found in the staircase leading to the terrace, thereby obstructing the passage way. Top Floor

i) A large hall at the loft level was converted into office cabins with wooden partitions and the same appeared to be occupied by Sarin Associates, Supreme Builders, Supreme Promoters, Supreme Marketing (P) Ltd. And Vikky Arin Impex (P) Ltd.

ii) The staircase above the loft level was converted into an office.

(f) That, apart from structural deviations referred to above, the seating arrangement within the balcony area of the cinema was itself in breach of the mandatory requirements of the DCR, 1953 and

DCR, 1981.

(1) Relying upon the Completion Certificate Ex. PW17/DA, dated 10th April, 1973, the Trial Court held that the number of seats originally sanctioned for the balcony was limited to 250 seats (two hundred and fifty seats). The Court also noticed that the first seating plan Ex. PW95/B1 was in conformity with the DCR, 1953 and provided a total of three exits, one each on the two sides of the balcony and the third in the middle. Gangways leading to these exits were also found to be in conformity with the statutory requirements which prescribed a width of 44 inches for the same. In the year 1974, however, Sushil Ansal (A-1) made a request for installation of 14 seats in what was originally sanctioned by the MCD to be an Inspection Room, pursuant whereto the Inspection Room was converted into a 14-seater box with the permission of the licensing authority. Two years later, a development of some significance took place inasmuch as by a Notification dated 30th September, 1976 issued by the Lt. Governor of Delhi, Uphaar Cinema permitted addition of 100 more seats to its existing capacity. Forty three of the said additional seats were meant to be provided in the balcony by using the vertical gangways to the right of the middle entry/exit of the cinema in the right wing of the balcony. The remaining 57 seats were meant for addition in the main auditorium of the cinema hall. The addition of these seats was approved on 30th September, 1976 as per the seating plan marked Ex. PW95/B-2.

(2) As per the above seating plan the vertical gangway along the rightmost wall of the balcony was completely utilized and blocked because of the installation of the additional seats whereas the width of the gangway along the right side of the middle entry/exit was reduced to 22.5 inches, the remainder of the space having been utilized for fixing 32 additional seats in that area. The addition of 11 more seats to the row along the back of the balcony (1 on the right, 8 in the middle and 2 on the left side) made up for the remainder of the 43 additional seats permitted under the Notification. The Trial Court found that in order to compensate for the blocking and narrowing of the gangways in the right wing, the seating plan provided for a 44 inch wide vertical gangway along the middle of the right wing of the balcony. Inevitably, the altered seating arrangement made it relatively more difficult for those occupying the right wing of the balcony to reach the exit.

(g) That an eight-seater family box was added in the year 1978 upon an application moved by Gopal Ansal (A-2), which had the effect of completely closing the right side exit, access to which already stood compromised on account of the additional seats.

(1) The above addition was made pursuant to a report given by S.N. Dandona (A-12), since deceased, who at the relevant time was posted as Executive Engineer, PWD and who appears to have inspected the site on 27th June, 1978 on a reference made to him by the Entertainment Tax Officer. What is significant is that the Entertainment Tax Officer had by his letter dated 2nd September, 1978 asked S.N. Dandona (A-12) to confirm his report pursuant to the inspection conducted by him, drawing his attention to Clause 6 of the First Schedule of DCR, 1953, which required that the total number of spectators accommodated in the building shall not exceed 20 per 100 sq. ft. of the area available for sitting and standing, or 20 per 133.5 sq. ft. of the overall area of the floor space in the auditorium. Mr. Dandona (A-12) replied in terms of his letter dated 20th September, 1978 Ex. PW29/DN, that the installation of the eight-seater box was in accordance with the prevalent DCR, 1953.

(2) The Trial Court found fault with the installation of the eight- seater box and held that even though permission for installation of the box had been granted to the Ansals (A-1 and A-2), the same continued to be in clear violation of Para 10(4) of the First Schedule to DCR, 1953 which in no uncertain terms stipulated that exits from the auditorium shall be placed suitably along both sides and along the back thereof.

(h) That to compensate for blocking of the exit on the right of the eight- seater box, an exit was provided along the back on the left side. This addition of an exit on the left side of the balcony did not satisfy the stipulation under Para 10(4) of the First Schedule of DCR, 1953.

(1) The object underlying para 10(4) of the First Schedule of DCR, 1953, observed the Trial Court, was to ensure rapid dispersal in both directions through independent stairways leading outside the building. This necessarily meant that addition of the left side exit did not amount to substantial compliance with the DCR, 1953, declared the Court.

(i) That addition of seats and closure of the right side gangway were in violation of the statutory provisions and severely compromised the need for quick dispersal in the event of an emergency.

(1) A further development and another dimension to the seating arrangement in the balcony came in the form of a Notification dated 27th July, 1979, from the Lt. Governor whereunder the relaxation in the number of seats provided to Uphaar Cinema under the 1976 Notification was withdrawn. The withdrawal, it appears, came as a consequence of a judgment delivered by the High Court of Delhi in a writ petition filed by the cinema owners challenging the State's power to fix the price of admission tickets to the theatre. The power to fix admission rates to the cinema having thus been taken away, the Lt. Governor appears to have withdrawn the relaxation in the number of additional seats allowed to the cinema owners under the 1976 Notification. This withdrawal was not acceptable to the Ansals (A-1 and A-2) along with others who challenged the same before the High Court of Delhi and obtained interim directions in their favour. The High Court directed that such of the additional seats as comply substantially with the requirements of the Rules may be allowed to stay while others which infringed the Rules may have to be removed. A show-cause notice was accordingly issued to Uphaar Cinema asking it to remove all the 100 additional seats, which according to the licensing authority were non-compliant with the requirement of the relevant Rules. Gopal Ansal (A-2) opposed the removal of these seats in the reply filed by him as Director of GPT Pvt. Ltd. stating that all the additional seats installed by them were compliant with the Cinematograph Rules and requested the authorities to apply their minds to the direction of the High Court regarding substantial compliance with the Rules.

(2) A fresh process of inspection of the Cinema was therefore started, pursuant to the direction of the High Court and the show- cause notice. This inspection was conducted by Mr. Amod Kanth, DCP (L), S.N. Dandona, Executive Engineer, MCD (A-12) and the Chief Fire Officer and Executive Engineer, all of whom had submitted a joint report Ex.PW29/DR. The report, inter alia, stated that 37 of the 43 additional seats in the balcony were substantially compliant with the Rules while 6 additional seats on the right side of the balcony were in gross contravention of Paras 7(1) and 8(1) of the First Schedule to DCR, 1953 as they were blocking vertical gangways and causing obstruction to

free egress of patrons from the balcony. The said 6 seats were, therefore, required to be removed and the original number of vertical gangways restored. The result was that 37 additional seats were allowed out of 43 to stay in the balcony in terms of order dated 24th December, 1979 marked Ex. PW29/DR passed by Mr. Amod Kanth, DCP (L).

(3) In his letter dated 29th July, 1980, Gopal Ansal (A-2), Director of GPT wrote a letter Ex. PW110/AA7 to the DCP(L) for installation of 15 additional seats in the balcony. Pursuant to the said letter, the DCP (L) wrote a letter dated 20th August, 1980 (Ex. PW29/DS) to the Executive Engineer, requesting him to verify whether the proposed installation of 15 seats would be compliant with the relevant provisions of the DCR, 1953 and to submit a detailed report regarding the same. In his reply dated 3rd September, 1980, Executive Engineer, S.N. Dandona (A-12) stated that the proposed installation of seats was not in accordance with the scheme of the DCR, 1953. Gopal Ansal (A-2), therefore, submitted a revised plan for the proposed additional seats vide letter dated 5th September, 1980 (Ex. PW29/DV). In his report Ex. PW29/DX dated 10th September, 1980 S.N. Dandona (A-12) stated that the additional 15 seats would be in conformity with DCR, 1953, but raised a concern that the installation of the 15 additional seats would bring the total number of seats in the balcony to 302 while the total number of exits would remain 3 in number. As per the First Schedule of the DCR, 1953, the number of exits should be 1 per 100 seats. This would imply that 2 additional seats in the balcony would be in excess, unless a fourth exit was to be provided. Having said that, S.N. Dandona (A-12) excused this excess on the grounds that it was decided in a meeting held in October, 1979 in which the DCP(L) and Chief Fire Officer were present that, keeping in view the High Court's orders for substantial compliance, an excess of 1% in the number of seats over the required number of exits should be allowed. Pursuant to S.N. Dandona's report, the DCP(L), Amod Kanth allowed the installation of the 15 additional seats in the balcony on 4th October, 1980. The result was that 15 additional seats were installed as per the seating plan marked Ex. PW95/B4. The Trial Court further found that DCP(L), Amod Kanth, S.N. Dandona (A-12), Chief Fire Officer and Executive Engineer were equally responsible for not noticing the closure of the right side exit.

(4) The Trial Court found that the addition of seats as also closure of the right side exit because of installation of the family box in that area, in the process blocking one vertical gangway, narrowing of another and partial blocking of the third (new) exit on the left side of the balcony were all in violation of the statutory provisions and severely compromised the safety of the patrons visiting the cinema. The Trial Court also held that because of the alterations in the seating plan on account of the addition of seats and blocking of the right side exit, rapid dispersal of the patrons in the event of an emergency was seriously jeopardized, which amounted to gross negligence on the part of the owners and management of Uphaar Cinema, as well as those who were responsible for sanctioning the changes.

(5) The Trial Court, in fact, went a step further and ordered further investigation of the offence under Section 173(8) of the CrPC vis-a-vis the persons left out by the CBI, particularly the DCP(L), Amod Kanth against whom the Association of Victims of Uphaar Tragedy had filed an application under Section 319 of the CrPC. The Trial Court held that the balcony seating plans showed that the authorities responsible for the enforcement of the Rules as well as their subordinates who were to carry out inspections were in connivance with the proprietors of the cinema, Sushil and Gopal Ansal

(A-1 and A-2) who acted in connivance with each other with a view to making an unlawful gain at the cost of the public.

(j) That the owners of Uphaar Cinema who carried out the structural deviations, the officers of the MCD who granted 'No Objection' certificates for running the cinema hall for the years 1995-96 and 1996-97 respectively despite the structural deviations existing in the cinema building and the managers of Uphaar Cinema who turned a blind eye to the said deviations and the threat to public safety caused by them, were the direct cause of death of 59 persons and 100 injured in the cinema hall. The act of the gatekeeper in fleeing from the cinema hall without unbolting the door of balcony was also found to be a direct cause of the death of persons inside the balcony.

(1) As regards the unfolding of events in the balcony after the smoke began to spread inside, the Trial Court relied upon the depositions of patrons seated in the balcony, PWs 1, 3, 7, 8, 11 & 12 who were fortunate to survive the ordeal, but all of whom had lost in the tragedy some of their relatives who accompanied them to the movie. The Trial Court also relied upon the depositions of relatives of deceased patrons from the balcony, examined as PWs 4, 5, 6, 9, 10, 13 & 66, who were not among those in the cinema hall themselves but who had rushed to the scene upon learning about the disaster. The deposition of the complainant Security Guard, Sudhir Kumar (PW63) who first noticed the fire and helped in rescue operations was also relied upon. Relying upon the above evidence, the Trial Court arrived at the following conclusions:

> i) Since the patrons were trapped inside the balcony which was engulfed by the smoke, those who succumbed died due to inhalation of smoke.
>
> ii) The patrons seated in the balcony were unable to save themselves in time since there were no proper means of escape.

iii) Though four exits were statutorily required in the balcony, only three were provided.

iv) As previously held, the alterations made to the balcony by the owners of Uphaar Cinema in contravention of legal provisions became a hindrance to egress into the open air for patrons in the balcony, as a result of which the said patrons could not save themselves in time.

v) Three exit doors were bolted. After becoming aware of the fire in the building, the gatekeeper, Manmohan Uniyal (A-8) fled the scene without unbolting the exit doors.

vi) Since the doors had been bolted, one of the doors had to be pushed open by the trapped patrons in order to come out into open space. This endeavour took 10-15 minutes, which resulted in a sufficient amount of exposure to the toxic gases to cause the death of the persons inhaling the same.

vii) Moreover, since descending the staircase would only take the patrons into denser smoke, people attempted to climb upwards towards the terrace. However, their path was obstructed due to the unauthorised construction of the commercial office of M/s Sareen Associates on the landing of the staircase on the top floor, which created a bottleneck and facilitated in causing the death of more

patrons. Moreover, one of the structural deviations previously noted by the Trial Court was the presence of a full width door on the right side of the stair case landing on the top floor, which created an obstruction for going to the terrace.

viii) It is revealed from the inspection reports that the four exhaust fans which were to face an open space instead opened out into the staircase.

ix) As previously held, the existing structural deviations in the building obstructed the egress of patrons into open spaces and thereby directly contributed to their deaths. These blatant structural deviations were never objected to by the MCD, a government body which is responsible for ensuring compliance with building plans.

x) The eye-witnesses have unanimously deposed that once they realized that smoke was entering the hall and a hue and cry was raised, no one from the management of the cinema theatre was there to help them escape. Instead, the managers fled the scene without thought for the patrons.

xi) There were no fire alarms or emergency lighting, nor was any public announcement made to warn the patrons of the fire.

xii) As per the deposition of the Projector Operator, Madhukar Bagde (PW85), an announcement system was present in the Projector Room but the same was out of order. He deposed that he had previously informed K.L. Malhotra (A-4), since deceased, to have the same rectified. This fact was also verified in the report of PW64, Dr. Rajinder Singh.

xiii) The managers being directly responsible for the daily functioning of the cinema failed in their duty to ensure the safety of the patrons seated inside. They grossly neglected their duties to take measures to prevent fires and follow fire safety regulations, which caused the death of patrons trapped inside.

xiv) It is writ large that the failure of the owners and management of Uphaar Cinema to adhere to provisions relating to fire safety caused the death/injury of those who had gone to view the film in the cinema.

xv) The factors which constituted the direct and proximate cause of death of 59 persons and injury of 100 persons in Uphaar cinema were the installation of the DVB transformer in violation of law, faulty repair of the DVB transformer, presence of combustible material in the cinema building, parking of cars near the transformer room, alterations in the balcony obstructing egress, structural deviations resulting in closure of escape routes in the building at the time of the incident, bolting of the exit doors from outside and the absence of fire fighting measures and two trained firemen, during the exhibition of the film in the cinema building.

(k) That the cause of death of the 59 victims was asphyxia caused by prolonged inhalation of smoke consisting of carbon monoxide and other toxic gases.

(1) On the basis of the result of the post-mortem examination on the dead body of Captain M.S. Bhinder, the Trial Court held that all the victims died on account of the very same cause as was found to be responsible for the demise of Captain Bhinder. Reliance was also placed by the Trial Court upon the reports submitted by a Board of Medical Experts from AIIMS which proposed that the death of 59 victims of asphyxia was caused due to inhalation of smoke consisting of carbon monoxide and other toxic gases. On the basis of the expert opinion, the Court concluded that the cause of death of the persons sitting in the balcony was due to inhalation of smoke. The Court noted that the effect of gases is rapid as the fatal period for carbon monoxide with 10% concentration is within 20-30 minutes while the fatal period of hydrocyanic acid is 2-20 minutes. The combustion of materials released such toxic compounds, which in turn caused rapid death of the victims. The Court also held that immediate well-organized intensive rescue operations could have saved many lives.

28. In conclusion and on the basis of the findings recorded by it, the Trial Court convicted Sushil Ansal (A-1) and Gopal Ansal (A-2) for commission of the offences punishable under Sections 304A, 337 and 338 read with Section 36 of IPC and sentenced each one of them to undergo rigorous imprisonment for a period of two years with a fine of Rs.5,000/- and a default sentence of six months. They were also convicted under Section 14 of the Cinematograph Act, 1952 and sentenced to pay a fine of Rs.1,000/- or undergo two months imprisonment in default. All the sentences were directed to run concurrently. The Trial Court further convicted S.S. Sharma (A-13) and N.D. Tiwari (A-14) who were officials of the Municipal Corporation of Delhi apart from H.S. Panwar (A-15), Divisional Officer, Delhi Fire Service under the above provisions and sentenced them similarly to undergo two years rigorous imprisonment and a fine of Rs.5,000/- besides default sentence of six months imprisonment. In addition, the Trial Court found the charges framed against the Managers of GPT, namely, R.K. Sharma (A-5), N.S. Chopra (A-6) and Assistant Manager Ajit Choudhary (A-7) as well as gatekeeper Manmohan Uniyal (A-8) under Section 304 read with Section 36 IPC proved and sentenced them to undergo rigorous imprisonment for a period of seven years with a fine of Rs.5,000/- and a default sentence of six months.

29. B.M. Satija (A-9) and A.K. Gera (A-10) who happened to be DVB Inspectors at the relevant point of time and Bir Singh (A-11) who happened to be DVB Senior Fitter were similarly convicted under Section 304 read with Section 36 IPC and sentenced to undergo seven years rigorous imprisonment besides a fine of Rs.5,000/- and a default sentence of six months imprisonment. Proceedings against R.M. Puri (A-3), Director of GPT and K.L. Malhotra (A-4) Deputy General Manager, S.N. Dandona (A-12) Executive Engineer, PWD and Surender Dutt (A-16) Station Officer, Delhi Fire Service, all of whom died during the pendency of the trial, were held to have abated. Not only that, the Trial Court directed further investigation into the matter under Section 173(8) Cr.P.C. in regard to other persons including Amod Kanth DCP(L) for allowing the cinema to function on temporary permits and for not demanding the detailed inspection reports before issuing such permits.

Findings of the High Court:

30. Aggrieved by the judgment and order passed against them, all the 12 accused persons convicted by the Trial Court preferred appeals before the Delhi High Court. The Association of Victims of Uphaar Tragedy also filed a revision petition challenging the judgment and order of the Trial Court

to the extent the same convicted the accused persons only for offences punishable under Section 304A IPC instead of Section 304, Part II IPC. The High Court, as noticed in the beginning of this order, disposed of the aforementioned appeal by a common judgment dated 19th December, 2008 whereby the High Court affirmed the findings of fact recorded by the Trial Court. We may at this stage briefly refer to the said findings for the sake of clarity.

I Re: Ownership, Management and Control of Uphaar Cinema:

(i) In para 9.68 of its judgment the High Court held that the ownership, management and control of Uphaar Cinema vested with the Ansal brothers (A-1 and A-2) at all material times.

(ii) In para 9.62 of its judgment the High Court affirmed the findings recorded by the Trial Court and held that Ansal brothers (A-1 and A-2) were responsible for all major decisions in regard to management and affairs of the Uphaar Cinema such as:

> (a) The decision regarding installation of DVB transformer within the cinema premises.
>
> (b) The decision relating to re-arrangement of seating plan in the balcony which was in violation of DCR, 1953 and DCR, 1981.
>
> (c) The decision regarding closure of right side exit by installation of eight-seater family box.
>
> (d) The decision regarding placement of additional seats in the balcony.
>
> (e) The grant of contracts for use of parking space.
>
> (f) The exercise of unlimited financial powers on behalf of the company and the power to create encumbrances and charges over its assets.
>
> (g) The decision relating to commercial use of the building.
>
> (h) The decisions concerning day-to-day affairs of the company.

(iii) In paras 9.63 and 9.64 the High Court held that the Ansals (A-1 and A-

2) were not only the Directors of the company but had continued to be involved in its day-to-day functioning even after they ceased to be so.

(iv) The High Court further held that merely because the letter dated 6th March, 1997 had presented R.M. Puri and K.L. Malhotra (both since deceased) as authorised signatories of the company for operating the cinema and for dealing with the licensing authority did not mean that a specific nomination in their favour was made in terms of Rule 10(2) of DCR, 1953 or the corresponding

provision under DCR, 1981. The High Court held that the shareholding pattern of the company revealed that the major/predominant shareholding continued to remain with the Ansal family and at no point of time was any outsider shown to have held any of the 5000 shares issued by the company.

(v) In para 9.67 of its judgment the High Court held that from the deposition of those shown to be the Directors of the company in the year 1996 to 1997, it is evident that even though they had attended certain meetings of the Board, they were completely unaware of the vital aspects including the fact that Uphaar Cinema was being run by Ansal Theatres and Clubotels Pvt. Ltd. and whether they were in fact Directors or empowered to act on behalf of the company.

II Re: DVB Transformer:

(i) In para 7.4 the High Court held that the DVB transformer had been installed against the provision of the Electricity Rules.

(ii) In paras 7.10 and 7.12 of its judgment the High Court rejected the submission made on behalf of Sushil Ansal (A-1) and Gopal Ansal (A-2) that they were coerced in providing space for the DVB transformer.

(iii) In paras 7.94, 7.95 and 7.96 of its judgment the High Court affirmed the findings recorded by the Trial Court that the DVB transformer was in poor maintenance on the date of the incident on account of the following:

> A) Protection relays which could have tripped off the DVB transformer were missing.
>
> B) The LT side cables from the bus bar did not have clamping system or support to the cables.
>
> C) The earth cable was in a twisted condition; and D) The Buchholtz relay system was not fitted on the transformer.

31. The High Court comprehensively dealt with the cause of fire and affirmed the findings recorded by the Trial Court that the fire had started from the DVB transformer on account of the improper repair carried out on the same without use of a crimping machine because of which the LT cable had got disconnected on the B-phase and an opening was created on the radiator fin when the live cable fell upon it and caused a short circuit. The High Court summed up the cause of the fire in paras 7.124 and 7.125 of its judgment.

32. The High Court held that the correspondence relating to the installation of the DVB transformer did not suggest any element of threat or use of force or economic power on the part of the DVB. On the contrary, the correspondence revealed an anxiety on the part of cinema management to start its operation. It also held in paras 7.10 and 7.11 of its judgment that the Uphaar establishment was a beneficiary of the DVB transformer since some parts of the building which were let out to tenants of

the establishment were receiving electricity supply from the said transformer.

III Re: Car Parking:

33. In para 7.17 of its judgment the High Court affirmed the findings recorded by the Trial Court that the parking of extra cars and the parking of cars close to the transformer room blocking the 16 ft. wide passage which was meant to be kept free for the movement of vehicles, aggravated the fire and contributed to the incident. The High Court held that the owners and the management of Uphaar Cinema had blatantly disregarded the requirements of law and the sanctioned plan thereby putting the lives of its patrons at risk. The High Court further held that Ansal brothers (A-1 and A-2) or the Managers had not conveyed to the parking contractor the legal and safety requirement of maintaining a safe distance between the vehicles and the transformer room while entering into a parking contract in the year 1988 nor was the parking arrangement subject to any kind of check. The outsourcing of the car parking did not, observed the High Court, absolve the cinema management which was the occupier and owner of the premises of their duty to ensure that vehicles parked immediately below the viewing area were maintained keeping all safety standards in mind.

IV Re: Structural Deviations:

34. In paras 7.39 to 7.60 of its judgment the High Court affirmed the findings recorded by the Trial Court that several structural deviations apart from violation in the balcony had been committed by the management of the cinema hall. The High Court held that construction of refreshment counters on the first floor of the cinema hall inhibited free passage of the patrons which was crucial in the event of an emergency and amounted to violation of para 10(1) of the First Schedule of DCR, 1953 and were hence in breach of the provisions of Section 14 of the Cinematograph Act and the licence issued thereunder. Similarly, the exhaust fans were so placed that they opened into the hall of the front staircase instead of opening into an open space. The structural deviations, according to the High Court, assumed an incrementally risky character which the cinema occupier was aware of. Similarly, the other violations referred to by the High Court including the storage and use of combustible materials and closing of one of the exits, besides shifting of the gangway contributed to violations that prevented quick dispersal of the patrons from the balcony area thereby culminating in the tragedy.

V Re: Seating arrangement in the balcony:

35. The High Court dealt with blocking of the right side exit by placing an 8-seater family box, addition of seats on the left side of the balcony that prevented quick dispersal of the patrons, providing gangways which were less than the required width and fixing of seats obstructing the left side (new) exit all of which contributed to a situation from which the victims could not escape to save their lives. The High Court further held that blocking of the right side exit by the 8-seater box rendered ineffective the mandate of para 9(1), DCR, 1953 which required that at least two stairways be provided for public use each not less than 4 ft. wide. Each one of these deviations had, according to the High Court, the effect of substantially increasing the risk to a point where an emergency requiring rapid egress from the balcony area could not have been effectively handled to save human

lives.

36. The High Court also affirmed the findings of the Trial Court on the following aspect and held that –

(i) Patrons were exposed to smoke for a long time and many were unable to leave the place swiftly.

(ii) Several eye witnesses had deposed that the balcony doors were bolted.

iii) The entry/exit doors leading to the foyer had to be forced open.

iv) The gatekeeper, Manmohan Uniyal (A-8) who was on duty at the time of the incident, had left his duty without unbolting the doors.

v) Absence of emergency lighting arrangements and absence of help at the critical juncture exposed the patrons to thick dense smoke for a long period that hindered their movement and finally claimed many lives.

(vi) No public address system was in use nor were there any emergency lights.

(vii) The cause of death was asphyxiation due to carbon monoxide poisoning.

(viii) Many patrons who had managed to escape from the balcony were trapped and had to break the open windows to flee.

(ix) Eye witness accounts established the presence of fire and hot smoke in the ground floor from 5.05 pm to 6.20 p.m. and the presence of smoke in the balcony even as late as 5.45 p.m. when the Chief Fire Officer removed 3 persons from the balcony.

37. The High Court on the above findings upheld the conviction of Sushil Ansal (A-1) and Gopal Ansal (A-2). It also upheld the conviction of H.S. Panwar (A-15) for offences punishable under Sections 304A, 337 and 338 read with Section 36 of the IPC but reduced the sentence awarded to them under Section 304A to one year rigorous imprisonment without interfering with the fine imposed by the Trial Court. The High Court also reduced the sentence awarded to the aforementioned three appellants under Section 337 to three months rigorous imprisonment and under Section 338 to one year rigorous imprisonment with the direction that the sentences shall run concurrently including the sentence awarded to Ansal brothers (A-1 and A-2) under Section 14 of the Cinematograph Act for which too the said two accused persons were convicted.

38. As regards the conviction of Manmohan Uniyal (A-8) gatekeeper, B.M. Satija (A-9) DVB Inspector and Bir Singh (A-11) Senior Fitter DVB, the High Court altered the same from Section 304 Part II read with Section 36 IPC to Sections 304A , 337 and 338 read with Section 36 IPC. The sentence awarded to them was accordingly reduced to two years rigorous imprisonment with a fine of Rs.2,000/- under Section 304A, 6 months rigorous imprisonment with a fine of Rs.500/- under

Section 337 and one year rigorous imprisonment with a fine of Rs.1,000/- under Section 338 with a default sentence of four months. The sentences were directed to run concurrently.

39. The remaining convicted persons, namely, R.K. Sharma (A-5), since deceased, N.S. Chopra (A-6) as well as A.K. Gera (A-10) DVB Inspector, S.S. Sharma (A-13) and N.D. Tiwari (A-14), MCD Officials were acquitted by the High Court and the revision petition filed by Association of Victims of Uphaar Tragedy dismissed.

40. Appeals have been filed before us by all those convicted and sentenced to undergo imprisonment by the High Court, except for the convicted gatekeeper, Manmohan Uniyal (A-8) who has served out the sentence awarded to him by the Courts below. We also have before us Criminal Appeals No.605-616 of 2010 filed by the CBI challenging the acquittal recorded by the High Court in favour of the four persons mentioned above. The Association of Victims of Uphaar Cinema has also filed Criminal Appeals No.600-602 of 2010 in which they have challenged the order of acquittal recorded by the High Court and prayed for a retrial of the accused persons for the offence punishable under Section 304 Part II IPC.

41. We have heard learned counsel for the parties at considerable length, who were at pains to refer to the evidence adduced at the trial to buttress their respective submissions. Broadly stated the following questions arise for our determination:

> I) Whether the concurrent findings of fact recorded by the Courts below prove the commission of any rash and/or negligent act by the accused persons or any one of them within the meaning of Section 304A of the IPC?
>
> II) Was the High Court justified in acquitting the Respondents no.4 (N.S. Chopra), no.7 (A.K. Gera), no.10 (S.S. Sharma) and no.11 (N.D. Tiwari) respondent in Criminal Appeal No.605-616 of 2010 filed by the CBI?

(III) Is there any basis for holding that the accused or any one of them was guilty of an offence of culpable homicide not amounting to murder punishable under Section 304 Part II of the IPC so as to justify a retrial of the accused persons for the said offence?

(IV) Whether the sentence awarded to those found guilty by the High Court deserves to be enhanced?

(V) What relief and/or general or specific directions need be issued in the matter having regard to the nature of the incident?

42. We propose to deal with the above questions ad seriatim.

Re: Question No.I:

43. Since this question has several facets to it, we propose to deal with the same under the following sub-headings to ensure clarity and avoid any possible confusion or repetition:

i) Scope of a criminal appeal by special leave

ii) 'Rash' or 'Negligent' – Meaning of

iii) What constitutes negligence?

iv) Difference between Negligence in civil actions and that in criminal cases.

v) The doctrine of causa causans.

vi) Whether Ansal brothers were occupiers of Uphaar Cinema building?

vii) Degree and nature of care expected of an occupier of a cinema building.

viii) Whether the accused were negligent and if so, whether the negligence was gross?

ix) Contentions urged in defence and the findings thereon.

(i) Scope of a Criminal Appeal by Special Leave:

44. The scope of a criminal appeal by special leave filed before this Court has been examined in several pronouncements of this Court over the past few decades. It is unnecessary to burden this judgment by referring to all those pronouncements, for a reference to only some of those decisions should suffice. Among them the scope of an appeal by special leave in a criminal matter was considered by a three-Judge Bench of this Court in Mst. Dalbir Kaur v. State of Punjab (1976) 4 SCC 158 and the principle governing interference by this Court in criminal appeals by special leave summarized in the following words:

> "8. Thus the principles governing interference by this Court in a criminal appeal by special leave may be summarised as follows:
>
> (1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;
>
> (2) that the Court will not normally enter into a reappraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on;

(3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;

(4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;

(5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence: It is very difficult to lay down a rule of universal application but the principles mentioned above and those adumbrated in the authorities of this Court cited supra provide sufficient guidelines for this Court to decide criminal appeals by special leave. Thus in a criminal appeal by special leave, this Court at the hearing examines the evidence and the judgment of the High Court with the limited purpose of determining whether or not the High Court has followed the principles enunciated above. Where the Court finds that the High Court has committed no violation of the various principles laid down by this Court and has made a correct approach and has not ignored or overlooked striking features in the evidence which demolish the prosecution case, the findings of fact arrived at by the High Court on an appreciation of the evidence in the circumstances of the case would not be disturbed."

45. In Radha Mohan Singh @ Lal Sahib and Ors. v. State of U.P. (2006) 2 SCC 450, this Court declared that it will not normally enter into reappraisal or review of evidence in an appeal under Article 136 of the Constitution unless the Trial Court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are found to be perverse. To the same effect is the decision of this Court in Raj Narain Singh v. State of U.P. and Ors. (2009) 10 SCC 362, where this Court held that the scope of appeal under Article 136 of the Constitution was very limited and that this Court does not exercise overriding powers under the said provision to reweigh the evidence and disturb the concurrent findings of fact reached upon proper appreciation. We may also refer to the decision of this Court in Surendra Pal and Ors. v. State of U.P. and Anr. (2010) 9 SCC 399 where this Court held that it could not embark upon a re- appreciation of the evidence when both the Sessions Court and the High Court had agreed in their appreciation of the evidence and arrived at concurrent findings of fact. This Court cautioned that it was necessary to bear in mind the limited scope of the proceedings under Article 136 of the Constitution which cannot be converted into a third appeal on facts and that mere errors are not enough to attract this Court's invigilatory jurisdiction. A similar view was expressed by this Court in Amitava Banerjee v. State of West Bengal (2011) 12 SCC 554 and Mohd. Arif v. State (NCT) of Delhi, (2011) 13 SCC 621 to which decisions one of us (Thakur, J.) was a party.

46. Suffice it to say that this Court is not an ordinary Court of appeal obliged to reappraise the evidence and record its conclusion. The jurisdiction to interfere under Article 136 is extraordinary and the power vested in this Court is not exercised to upset concurrent findings of fact recorded by

the two Courts below on a proper appreciation of evidence. It is only in those rare and exceptional cases where the appreciation of evidence is found to be wholly unsatisfactory or the conclusion drawn from the same perverse in nature, causing miscarriage of justice that this Court may correct the course of justice and undo the wrong. Perversity in the findings, illegality or irregularity in the trial that results in injustice or failure to take into consideration an important piece of evidence are some of the situations in which this Court may reappraise the evidence adduced at the trial but not otherwise. The scope of interference with the findings of fact concurrently found by the Trial Court and the First Appellate Court is thus permissible as a rarity only in the situations enumerated above and not as a matter of course or for mere asking.

(ii) 'Rash' or 'Negligent' – Meaning of:

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

> "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."

48. The terms 'rash' or 'negligent' appearing in Section 304A extracted above have not been defined in the Code. Judicial pronouncements have all the same given a meaning which has been long accepted as the true purport of the two expressions appearing in the provisions. One of the earliest of these pronouncements was in Empress of India v. Idu Beg ILR (1881) 3 All 776, where Straight J. explained that in the case of a rash act, the criminality lies in running the risk of doing an act with recklessness or indifference as to consequences. A similar meaning was given to the term 'rash' by the High Court of Madras in In Re: Nidamarti Negaghushanam 7 Mad HCR 119, where the Court held that culpable rashness meant acting with the consciousness that a mischievous and illegal consequence may follow, but hoping that it will not. Culpability in the case of rashness arises out of the person concerned acting despite the consciousness. These meanings given to the expression 'rash', have broadly met the approval of this Court also as is evident from a conspectus of decisions delivered from time to time, to which we shall presently advert. But before we do so, we may refer to the following passage from "A Textbook of Jurisprudence" by George Whitecross Paton reliance whereupon was placed by Mr. Jethmalani in support of his submission. Rashness according to Paton means "where the actor foresees possible consequences, but foolishly thinks they will not occur as a result of his act".

49. In the case of 'negligence' the Courts have favoured a meaning which implies a gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual which having regard to all the circumstances out of which the charge arises, it may be the imperative duty of the accused to have adopted. Negligence has been understood to be an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs,

would do, or doing something which a prudent and reasonable person would not do. Unlike rashness, where the imputability arises from acting despite the consciousness, negligence implies acting without such consciousness, but in circumstances which show that the actor has not exercised the caution incumbent upon him. The imputability in the case of negligence arises from the neglect of the civil duty of circumspection.

(iii) What constitutes Negligence?:

50. The expression 'negligence' has also not been defined in the Penal Code, but, that has not deterred the Courts from giving what has been widely acknowledged as a reasonably acceptable meaning to the term. We may before referring to the judicial pronouncements on the subject refer to the dictionary meaning of the term 'negligence'.

51. Black's Law Dictionary defines negligence as under:

> "The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of other's rights."

52. Charlesworth and Percy on Negligence (Twelfth Edition) gives three meanings to negligence in forensic speech viz: (i) in referring to a state of mind, when it is distinguished in particular from intention; (ii) in describing conduct of a careless type; and (iii) as the breach of a duty to take care imposed by either common law or statute. The three meanings are then explained thus:

> "The first meaning: Negligence as a state of mind can be contrasted with intention. An act is intentional when it is purposeful and done with the desire or object of producing a particular result. In contrast, negligence in the present sense arises where someone either fails to consider a risk of particular action, or having considered it, fails to give the risk appropriate weight.
>
> The second meaning: Negligence can also be used as a way to characterize conduct, although such a use may lead to imprecision when considering negligence as a tort. Careless conduct does not necessarily give rise to breach of a duty of care, the defining characteristic of the tort of negligence. The extent of a duty of care and the standard of care required in performance of that duty are both relevant in considering whether, on any given facts conduct which can be characterized as careless, is actionable in law.
>
> "The third meaning: The third meaning of negligence, and the one with which this volume is principally concerned, is conduct which, objectively considered, amounts to breach of a duty to take care".

53. Clerk & Lindsell on Torts (Eighteenth Edition) sets out the following four separate requirements of the tort of negligence:

> "(1) the existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damages in suit on the class of person to which the claimant belongs by the class of person to which the defendant belongs is actionable;
>
> (2) breach of the duty of care by the defendant, i.e., that it failed to measure up to the standard set by law;
>
> (3) a casual connection between the defendant's careless conduct and the damage;
>
> (4) that the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote."

54. Law of Torts by Rattanlal & Dhirajlal, explains negligence in the following words:

> "Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. According to Winfield, "negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff". The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) Breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs for damage is a necessary ingredient of this tort. But as damage may occur before it is discovered; it is the occurrence of damage which is the starting point of the cause of action.

55. The above was approved by this Court in Jacob Mathew v. State of Punjab and Another (2005) 6 SCC 1.

56. The duty to care in cases whether civil or criminal including injury arising out of use of buildings is examined by courts, vis-à-vis occupiers of such bindings. In Palsgraf v. Long Island Railroad, 248 NY 339, Justice Cardozo explained the orbit of the duty of care of an occupier as under:

> "If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming with reference to her, did not take to itself the quality of a tort because it happened to be a wrong, though apparently not one

> involving the risk of bodily insecurity, with reference to someone else...Even then, the orbit of the danger as disclosed to the eye of reasonable vigilance would be the orbit of the duty."

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

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

58. The duty of a theatre owner to his patrons was outlined as follows in Rosston v. Sullivan, 278 Mass 31 (1932):

> "The general duty to use ordinary care and diligence to put and keep this theatre in a reasonably safe condition, having regard to the construction of the place, character of the entertainment given and the customary conduct of persons attending."

59. The above case was cited with approval in Helen Upham v. Chateau De Ville Theatre Inc 380 Mass 350 (1980).

60. The Supreme Court of Wyoming in Mostert v. CBL & Associates, et. Al., 741 P.2d 1090 (Wyo. 1987) held that the owner of a theatre, AMC owed an affirmative duty to patrons as "business visitor invitees" to inform them of off-premises dangers (in that case a flash flood) which were reasonably foreseeable:

> "We conclude that appellee AMC owed the Mostert family an affirmative duty to exercise reasonable or ordinary care for their safety which includes an obligation to advise them of off- premises danger that might reasonably be foreseeable. We are not suggesting by our determination that AMC had a duty to restrain its patrons or even a duty to advise them what to do. The duty as we see it is only to reveal what AMC knew to its customers."

61. In Brown v. B & F Theatres Ltd., (1947) S.C.R. 486, the Supreme Court of Canada held the liability of a theatre owner to be 90% and the contributory negligence of the appellant to be 10% in a case with the following facts:

> "The appellant, Margaret Brown, was injured by falling down a stairway in a theatre in Toronto. After passing through a brightly lighted lobby, she entered the foyer, intending to go to the ladies' room. This was on the left of the entrance and was indicated by a short electric sign 7' high facing her as she turned. In the foyer, a

> narrow corridor, the lights were dimmed; and, proceeding along the wall at her left, she opened what she took to be the door to the waiting room. A fire extinguisher 2' long and 4' from the floor hung on the wall next to the left side of the door; and at the right side was a post or panel 7" wide, projecting about 4" out from the wall; the door, 31" wide, swinging toward the left, on which the word "Private" was printed in faint letters, was between three and four feet in front of the sign and led to a stairway into the basement. The platform or landing was about 24" deep and the door must have swung somewhat before the edge would be brought into view. Immediately inside on the wall at the right and on a level with her eyes, was a light which, on her story, momentarily blinded her. The entrance to the ladies' room was separated from this door by the post or panel."

62. Holding that the theatre owner had breached the duty owed by a proprietor of premises to his invitee, the Court held as follows:

> "Here, Mrs. Brown paid a consideration for the privileges of the theatre, including that of making use of the ladies' room. There was a contractual relation between her and the theatre management that exercising prudence herself she might enjoy those privileges without risk of danger so far as reasonable care could make the premises safe." (emphasis supplied)

63. In Dabwali Fire Tragedy Victims Association v. Union of India and Ors., (2001) 1 ILR Punjab & Haryana 368 to which one of us (Thakur J.) was a party, the High Court of Punjab & Haryana held that both the school, as well as the owners of a premises on which the school function was held, were liable as occupiers for the tragic death of 406 persons, most of them children, caused by a fire which broke out on the premises during the function. In dealing with the question whether the owners of the premises, Rajiv Marriage Palace, being agents of the school could be held accountable, the High Court held as follows:

> "..The School ought to have known that in a function which is open to general public, a Pandal with a capacity of 500 to 600 persons spread over no more than an area measuring 100' x 70', a gathering of 1200 to 1500 persons could result in a stampede and expose to harm everyone participating in the function especially the children who were otherwise incapable of taking care of their safety. The school ought to have known that the availability of only one exit gate from the Marriage Palace and one from the Pandal would prove insufficient in the event ofany untoward incident taking place in the course of function. The School ought to have taken care to restrict the number of invitees to what could be reasonably accommodated instead of allowing all and sundry to attend and in the process increase the chances of a stampede. The School ought to have seen that sufficient circulation space in and around the seating area was provided so that the people could quickly move out of the place in case the need so arose. Suffice it to say that a reasonably prudent School Management organizing an annual function could and indeed was duty bound to take care and ensure that no harm came to anyone who attended the function whether as an invitee

> or otherwise, by taking appropriate steps to provide for safety measures like fire fighting arrangements, exit points, space for circulation, crowd control and the like. And that obligation remained unmitigated regardless whether the function was held within the School premises or at another place chosen by the Management of the School, because the children continued to be under the care of the School and so did the obligation of the School to prevent any harm coming to them. The principle of proximity creating an obligation for the School qua its students and invitees to the function would make the School liable for any negligence in either the choice of the venue of the function or the degree of care that ought to have been taken to prevent any harm coming to those who had come to watch and/or participate in the event. Even the test of foreseeability of the harm must be held to have been satisfied from the point of view of an ordinary and reasonably prudent person. That is because a reasonably prudent person could foresee danger to those attending a function in a place big enough to accommodate only 500 to 600 people but stretched beyond its capacity to accommodate double that number. It could also be foreseen that there was hardly any space for circulation within the Pandal. In the event of any mishap, a stampede was inevitable in which women and children who were attending in large number would be worst sufferers as indeed they turned out to be. Loose electric connections, crude lighting arrangements and an electric load heavier than what the entire system was geared to take was a recipe for a human tragedy to occur. Absence of any fire extinguishing arrangements within the Pandal and a single exit from the Pandal hardly enough for the people to run out in the event of fire could have put any prudent person handling such an event to serious thought about the safety of those attending the functioning especially the small children who had been brought to the venue in large numbers…"

64. Referring to the English decisions in Wheat v. E. Lacon & Co. (1966) 1 All ER 582, Hartwell v. Grayson Rollo (supra), Thomson v. Cremin (1953) 2 All ER 1185 and H & N Emanuel Ltd. v. Greater London Council & Anr. (1971) 2 All ER 835, the High Court went on to hold as follows:

> "93. In the instant case while the School had the absolute right to restrict the entry to the venue of the function being organized by it and everything that would make the function go as per its requirements, the owners had not completely given up their control over the premises, and were indeed present at the time the incident occurred. The facts and circumstances brought on record in the course of the enquiry establish that the School and the Marriage Palace owners were both occupying the premises and were, therefore, under an obligation to take care for the safety of not only the students, but everyone who entered the premises on their invitation or with their permission specific or implied. As to the obligation of an occupier to take care qua his invitees a long line of English decisions have settled the legal position…
>
> xx xx xx

> 97. In the light of the above, we have no hesitation in holding that the One Man Commission of Inquiry was perfectly justified in holding the School and the Marriage Palace liable for the act of tort arising out of their negligence and duty to take care about the safety of all those invited to the function at Dabwali. Question No. 2 is answered accordingly."

65. In R. v. Gurphal Singh [1999] CrimLR 582, the Court of Appeal in England dealt with a case where a person staying at a lodging house occupied and managed by the Singh family died in his sleep due to carbon monoxide poisoning. The cause of the carbon monoxide was the blocking of the chimney in the room of the lodger, as well as in the neighbouring room due to which the smoke from a fire in the room could not escape. While determining whether the Singh family had breached their duty of care, the Court held as follows:

> "...In substance this is a case where those living in the room in which Mr. Foster died in a lodging house managed by Singh family. They were led to believe that the appellant and his father would take care that they were not poisoned by equipments provided by the family. The appellant was possessed of sufficient information to make him aware of a danger of death from gas. He may not have had sufficient skill to be able to discover how that danger arose but he was responsible for taking reasonable steps to deal with that danger if need by calling in expert help. In those circumstances the judge was right to hold that there was a sufficient proximity between the lodgers on the one side and the father and son on the other side to place a duty of care on the latter."

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

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

67. Conceptually the basis for negligence in civil law is different from that in criminal law, only in the degree of negligence required to be proved in a criminal action than what is required to be proved by the plaintiff in a civil action for recovery of damages. For an act of negligence to be culpable in criminal law, the degree of such negligence must be higher than what is sufficient to prove a case of negligence in a civil action. Judicial pronouncements have repeatedly declared that in order to constitute an offence, negligence must be gross in nature. That proposition was argued

by Mr. Ram Jethmalani at great length relying upon English decisions apart from those from this Court and the High Courts in the country. In fairness to Mr. Salve, counsel appearing for the CBI and Mr. Tulsi appearing for the Association of Victims, we must mention that the legal proposition propounded by Mr. Jethmalani was not disputed and in our opinion rightly so. That negligence can constitute an offence punishable under Section 304A of the IPC only if the same is proved to be gross, no matter the word "gross" has not been used by the Parliament in that provision is the settled legal position. It is, therefore, unnecessary for us to trace the development of law on the subject, except making a brief reference to a few notable decisions which were referred to at the bar.

68. One of the earliest decisions which examined the question of criminal negligence in England was R. v. Bateman (1925) 94 L.J.K.B. 791 where a doctor was prosecuted for negligence resulting in the death of his patient. Lord Hewart L.C.J. summed up the test to be applied in such cases in the following words:

> "A doctor is not criminally responsible for a patient's death unless his negligence or incompetence passed beyond a mere matter of compensation and showed such disregard for life and safety as to amount to a crime against the State."

69. Nearly two decades later the Privy Council in John Oni Akerele v. The King AIR 1943 PC 72 found itself confronted by a similar question arising out of the alleged medical negligence by a doctor who was treating patients for an endemic disease known as "Yaws" which attacks both adults and children causing lesions on the body of the patient. Following the treatment, 10 children whom the accused had treated died allegedly because the injection given to the patients was too strong resulting in an exceptional reaction among the victims. The allegation against the doctor was that he had negligently prepared too strong a mixture and thereby was guilty of manslaughter on account of criminal negligence. Relying upon Lord Hewart's L.C.J. observations extracted above, the Privy Council held:

> "11. Both statements are true and perhaps cannot safely be made more definite, but it must be remembered that the degree of negligence required is that it should be gross, and that neither a jury nor a Court can transform negligence of a lesser degree into gross negligence merely by giving it that appellation. The further words spoken by the Lord Chief Justice in the same case are, in their Lordships' opinion, at least as important as those which have been set out:
>
> It is desirable that, as far as possible, the explanation of criminal negligence to a jury should not be a mere question of epithets. It is, in a sense, a question of degree, and it is for the jury to draw the line, but there is a difference in kind between the negligence which gives a right to compensation and the negligence which is a crime."

70. What is important is that the Privy Council clearly recognized the difficulty besetting any attempt to define culpable or criminal negligence and held that it was not possible to make the distinction between actionable and criminal negligence intelligible, except by means of illustrations drawn from actual judicial opinions. On the facts of that case the Privy Council accepted the view

that merely because a number of persons had taken gravely ill after receiving an injection from the accused, a criminal degree of negligence was not proved.

71. In Jacob Mathew's case (supra) a three-Judge Bench of this Court was examining a case of criminal medical negligence by a doctor under Section 304A IPC. This Court reviewed the decisions on the subject including the decision of the Privy Council in John Oni Akerele's case (supra) to sum up its conclusions in para 48. For the case at hand conclusions 5 and 6 bear relevance which may, therefore, be extracted:

> "48. We sum up our conclusions as under:
>
> xxx xxx xxx (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 304-A IPC, 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 304-A IPC has to be read as qualified by the word "grossly"."

72. The legal position in England remains the same as stated in R. v. Bateman (supra). That is evident from a much later decision of the House of Lords in R. v. Adomako (1994) 3 All ER 79 where the legal principle of negligence in cases involving manslaughter by criminal negligence were summed up in the following words:

> "...In my opinion the law as stated in these two authorities is satisfactory as providing a proper basis for describing the crime of involuntary manslaughter. Since the decision in Andrews v. DPP (1937) 2 All ER 552, was a decision of your Lordships' House, it remains the most authoritative statement of the present law which I have been able to find and although its relationship to R. v. Seymour (1983) 2 ALL ER 1058 is a matter to which I shall have to return, it is a decision which has not been departed from. On this basis in my opinion the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such breach of duty is established the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and therefore as a crime. This will depend on the seriousness of the breach of duty committed by the defendant in all the circumstances in which the defendant was placed when it occurred. The jury will have to consider whether the extent to which the defendant's conduct departed from the proper standard of care

> incumbent upon him, involving as it must have done a risk of death to the patient, was such that it should be judged criminal.
>
> It is true that to a certain extent this involves an element of circularity, but in this branch of the law I do not believe that is fatal to its being correct as a test of how far conduct must depart from accepted standards to be characterised as criminal. This is necessarily a question of degree and an attempt to specify that degree more closely is I think likely to achieve only a spurious precision. The essence of the matter, which is supremely a jury question, is whether, having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission…"

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

74. We propose to revert to the subject at an appropriate stage and refer to some of the decided cases in which this Court had an occasion to examine whether the negligence alleged against the accused was gross, so as to constitute an offence under Section 304A of the IPC.

(V) Doctrine of Causa Causans:

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

> "…to impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the act should have been the direct result of a rash and negligent act of the accused and that act must be proximate and efficient cause without the intervention of another negligence. It must have been the causa causans; it is not enough that it may have been the causa sine qua non."

76. The above statement of law was accepted by this Court in Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra AIR 1965 SC 1616. We shall refer to the facts of this case a little later especially because Mr. Jethmalani, learned Counsel for the appellant-Sushil Ansal, placed

heavy reliance upon the view this Court has taken in the fact situation of that case.

77. Suffice it to say that this Court has in Kurban Hussein's case (supra) accepted in unequivocal terms the correctness of the proposition that criminal liability under Section 304-A of the IPC shall arise only if the prosecution proves that the death of the victim was the result of a rash or negligent act of the accused and that such act was the proximate and efficient cause without the intervention of another person's negligence. A subsequent decision of this Court in Suleman Rahiman Mulani v. State of Maharashtra AIR 1968 SC 829 has once again approved the view taken in Omkar Rampratap's case (supra) that the act of the accused must be proved to be the causa causans and not simply a causa sine qua non for the death of the victim in a case under Section 304-A of the IPC.

78. To the same effect are the decisions of this Court in Rustom Sherior Irani v. State of Maharashtra 1969 ACJ 70; Balchandra @ Bapu and Anr. v. State of Maharashtra AIR 1968 SC 1319; Kishan Chand v. State of Haryana (1970) 3 SCC 904; S.N Hussain v. State of A.P. (1972) 3 SCC 18; Ambalal D. Bhatt v. State of Gujarat (1972) 3 SCC 525 and Jacob Mathew's case (supra).

79. To sum up: for an offence under Section 304-A to be proved it is not only necessary to establish that the accused was either rash or grossly negligent but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim. As to what is meant by causa causans we may gainfully refer to Black's Law Dictionary (Fifth Edition) which defines that expression as under:

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

80. The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines Causa Causans as follows:

> "the immediate cause as opposed to a remote cause; the 'last link in the chain of causation'; the real effective cause of damage"

81. The expression "proximate cause" is defined in the 5th edition of Black's Law Dictionary as under:

> "That which in a natural and continuous sequence unbroken by any efficient, intervening cause, produces injury and without which the result would not have occurred. Wisniewski vs. Great Atlantic & Pac. Tea Company 226 Pa. Super 574, 323 A2d, 744,
>
> 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural

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

(vi) Whether Ansal brothers were occupiers of Uphaar cinema building:

82. In cases where negligence is alleged in regard to use of buildings and structures permanent or temporary, the duty to care is fixed on the person or persons who were occupiers of such buildings or structures. Since the charge in the present case also relates to the use of a building, the question whether the appellants Sushil and Gopal Ansal, were the occupiers of Uphaar Cinema, so as to cast a duty to care upon them towards the patrons who came to watch the exhibition of cinematographs needs to be addressed.

83. Appearing for Sushil Ansal Mr. Ram Jethmalani, learned senior advocate, in his inimitable style and remarkable forensic skill argued that his client Sushil Ansal was not the occupier of the Uphaar Cinema nor did he owe any duty of care towards those who came to watch the movie on the fateful day so as to give rise to any civil or criminal liability against his client for the alleged breach of any such duty. Mr. Sushil Kumar appearing for Gopal Ansal, adopted a similar line of argument and urged that even Gopal Ansal had nothing to do with the cinema or the management of its affairs as on the date of the unfortunate fire incident. Reliance in support of that submission was placed both by Mr. Jethmalani and Mr. Sushil Kumar on the fact that the Cinema was owned by GPTA Pvt. Ltd. and later by Ansal Theaters & Clubotels Pvt. Ltd. who alone could be said to be the occupiers of the Cinema at the relevant point of time. Reliance was also placed upon the fact that Sushil Ansal was the Managing Director of the Company only till 21st November, 1983. He had finally retired from the Board on 17th October, 1988, thereby putting an end to his association with the Cinema and its affairs. Even Gopal Ansal who took over as Managing Director of the Company on 21st November, 1983 had retired from the Board of Directors on 17th October, 1988, whereafter he exercised no control over the Cinema or its management to earn him what is retrospect is a dubious distinction of being the "occupier of the cinema". He had no doubt resumed the Directorship of the company for a period of six months in December, 1994, but was concerned only with the business of the Clubs being run by the company. This implied, according to the learned counsel, that neither Sushil nor Gopal Ansal was the occupier of the Cinema on the date of the occurrence to give rise to any civil or criminal liability against them.

84. Before we deal with the factual backdrop, in which the question whether the Ansal Brothers were occupiers of the Cinema has to be answered, we must steer clear of the impression that an occupier must be the owner of the premises. While it is true that an owner may in a given fact situation be also the occupier of the premises owned by him, it is not correct to say that for being an occupier one must necessarily be the owner of the premises in question. What is important is whether the premises in question was sufficiently and not exclusively under the control of defendant/accused, and for being in such control, ownership of the premises is not a condition precedent. An occupier may be in control of the premises even when he does not own the same whether fully or jointly with

others. It is also not necessary that the control must be full and all pervasive. It follows that if there are more than one occupiers of a building, and each one neglects the duty to care, the liability whether civil or criminal will fall on all of them. The law on the subject is settled in England by the decision of the House of Lords in Wheat v. E. Lacon & Co. (supra), where Lord Denning applied the test of sufficient degree of control and not exclusive or entire control to determine whether the person concerned was an occupier. The following passage is apposite in this regard:

> "It was simply a convenient word to denote a person who had a sufficient degree of control over premises to put him under a duty of care towards those who came lawfully on to the premises. In order to be an 'occupier' it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be occupiers. And whenever this happens, each is under a duty to use care towards persons coming lawfully on to the premises, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure but each may have a claim to contribution from the other."

85. To the same effect is the decision in H & N Emanuel Ltd. v. Greater London Council & Anr. (supra) where the Court made the following observations:

> "Any person was an occupier for the purposes of fire if he had a sufficient degree of control over the premises and could say with authority to anyone who came there, "Do or do not light a fire," or "Put out that fire". If he could, he was liable for negligence on the part of any person who came there."

86. Coming to the facts of the case at hand, merely because the company was the legal owner of the Cinema premises, did not mean that the Company and Company alone was the occupier thereof. The question whether the Ansal Brothers (Sushil and Gopal) exercised any control over the affairs of the Cinema, and its maintenance was a pure and simple question of fact, on which a great deal of evidence was led at the trial, and appreciated by the two Courts below. We have in the preceding part of this judgment referred to the findings of fact recorded by the Courts below on that aspect. But, for the sake of completeness, we may refer to those findings in some detail at this stage over again.

87. The trial Court and, so also, the High Court have both concurrently held that Sushil and Gopal Ansal were, at all material times, at the helm of the affairs of the company that owned Uphaar cinema. All crucial decisions relating to the cinema including decisions regarding installation of DVB transformer on the premises, closure of the right side exit & gangway and rearrangement of the seating plan in the balcony were taken while either one or the other of the two was either a Director or Managing Director of the company. Both the Courts have further found that Ansal brother's control over the day-to-day affairs and the staff employed to look after the cinema management continued even upto the date of the incident. In particular the Courts below have concurrently held that the decision to install the DVB transformer and to let out various parts of the premises for

commercial use in violation of the sanctioned plan were taken by Sushil Ansal as Managing Director of the company. Applications for grant of the cinema license and subsequent renewals were found to have been made by him as the representative licensee on behalf of the company even after his purported retirement from the Board of Directors. Not only that, the Courts below have concurrently held that Sushil Ansal was exercising a high degree of financial control over the affairs of the company and the cinema owned by him. Gopal Ansal was similarly exercising an equally extensive degree of financial control even after his retirement as Director. The Courts below have also found that all decisions relating to changes in the balcony seating arrangement and installation of additional seats were taken during Gopal Ansal's term as Managing Director and at his request. The Courts have noticed and relied upon the Show Cause Notice dated 28th May, 1982 in which Gopal Ansal, the Managing Director, was cautioned about the dangerous practice being followed by the cinema management of bolting the doors of the cinema hall during the exhibition of the films. An assurance to the effect that such a practice would be discontinued was given by Gopal Ansal as Managing Director of the company.

88. In conclusion the High Court has outlined eight decisions which were directly attributable to the Ansal brothers including decisions relating to the day-to-day affairs and commercial use of the cinema premises as also the seating arrangement in the balcony and in no uncertain terms rejected the argument that Ansal brothers had nothing to do with the company and the cinema after their retirement from the Board of Directors in 1988. All these findings are, in our opinion, supported by overwhelming evidence on record which satisfactorily proves not only that Ansal brothers continued to exercise all pervasive control over the affairs of the cinema but also because the cinema license, at all material times, showed Sushil Ansal as the representative license of the Uphaar Cinema. Our attention was also drawn to an affidavit filed by Sushil Ansal marked as EX.PW.50/B in which Sushil Ansal unequivocally acknowledged that he was the occupier of the cinema. The relevant portion of the affidavit reads as under:

> "I, Sushil Ansal, s/o Late Shri Charanji Lal, R/o N-148, Panchshila Park, New Delhi, Chairman of Green Park Theatres Associated (P) Ltd., 115 Ansal Bhawan, 16 Kastuba Gandhi Marg, New Delhi – 110001, am applying for renewal of License for the year 1992-93. I have not without permission, transferred the License or the Licensed place or the Cinematographs to any person during the year 1991-92 to exhibit films in the Licensed place. I am still the occupier of the licensed premises and owner of the Cinematograph." (emphasis supplied)

89. The Courts below have, in our view, correctly noticed the fact that not one out of a total of 5000 shares of the company was ever owned by anyone outside the Ansal family. The Courts have also placed reliance upon the depositions of Pranav Ansal (PW-109), V.K. Aggarwal (PW-113), Subhash Verma (PW-114) and Kusum Ansal, wife of Sushil Ansal (PW-115) to conclude that all these persons who were Directors or had financial powers on the date of the incident were completely unaware of the affairs of the company as well as the cinema enterprise, a fact, that goes a long way to prove that the cinema was being managed by Ansal brothers who had a complete sway over its affairs. What is worse is that some of these witnesses expressed their ignorance about whether they were Directors or whether they had financial powers within the company or that the company was still involved in

cinema business.

90. The cumulative effect of the above facts and circumstances proved by cogent evidence placed on record by the prosecution, in our view, fully supports the prosecution case that Sushil and Gopal Ansal were in full control over the affairs of the company which owned the cinema, as well as the cinema itself, at all material times, including the date of the incident. We have, therefore, no hesitation in affirming the finding that the Ansal brothers - Sushil and Gopal were both occupiers of the cinema complex as on the date of the incident in which capacity they owed a duty to care for the safety of the patrons visiting/coming to the premises.

91. It was contended by Mr. Jethmalani that the offence if any having been committed by the company, officers of the company could not be vicariously held guilty of criminal negligence. Reliance, in support of that submission was placed by Mr. Jethmalani upon the provisions of Section 141 of the Negotiable Instruments Act and the decisions of the Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89, JK Industries and others v. Chief Inspector of Factories and Boilers (1996) 6 SCC 685. It was urged that in the absence of any provisions in the IPC rendering the officers of the company vicariously liable for prosecution for the offences committed by the company, there was no question of the appellant Ansal brothers being held guilty that too for an offence committed long after they had ceased to hold any position in the company. We regret our inability to accept that submission. We say so because the appellants have not been prosecuted as officers of a company accused of committing an offence, nor is it the case of the prosecution that the appellants are vicariously liable as in the case of those falling under Section 141 of the Negotiable Instruments Act. The prosecution case on the other hand is that in their capacity as occupiers the appellant Ansal brothers had a duty to care for the safety of the patrons which duty they grossly neglected. The entire substratum of the case is, therefore, different from the assumption on which Mr. Jethmalani has built his argument. The assumption being misplaced, the argument can be no different.

(vii) Degree and nature of care expected of an occupier of a cinema building:

92. What is the degree of care expected from the occupier of a cinema is the next question to which we must advert at this stage. Two fundamental principles must be noticed at the threshold while answering that question. The first is that the degree and nature of care expected of an occupier depends upon the fact situation in which the duty to care arises. The second and equally important principle at common law is that the degree of care in a given fact situation would depend upon whether the person to whom the duty is owed is a contractual visitor, invitee, licensee or trespasser. Of these the occupier owes the highest degree of care to a contractual visitor viz. a person who pays consideration to be present on the premises for some purpose; whatever that purpose be. At common law there is an implied term in the contract between the occupier and the visitor that the occupier's premises shall be reasonably safe. The occupier's duty must be held to have been breached if any injury is caused to a contractual visitor by any defect in the premises apart from a latent defect. Winfield & Jolowicz on Tort (Sixteenth Edition) explains the duty of an occupier to take care towards different categories of visitors in the following passage:

> "At common law the duties of an occupier were cast in a descending scale to four different kinds of persons and a brief account is necessary to gain a full understanding of the Act. The highest degree of care was owed by the occupier to one who entered in pursuance of a contract with him (for example a guest in an hotel): in that case there was an implied warranty that the premises were as safe as reasonable care and skill could make them. A lower duty was owed to the "invitee", that is to say, a person who (without any contract) entered on business of interest both to himself and the occupier (for example a customer coming into a shop to view the wares): he was entitled to expect that the occupier should prevent damage from unusual danger, of which he knew or ought to have known. Lower still was the duty to the "licensee", a person who entered with the occupier's express or implied permission but without any community of interest with the occupier: the occupier's duty towards him was to warn him of any concealed danger or trap of which he actually knew. Finally, there was the trespasser, to whom under the original common law there was owed only a duty to abstain from deliberate or reckless injury.

93. One of the earliest common law decisions regarding occupier's liability to visitors is in Mclenan v. Segar (1917) 2 KB 325 where an innkeeper was held liable for injury caused to a guest while escaping from a fire in the inn. The fire was caused because there was no proper mechanism for conveying the smoke and burning soot from the kitchen chimney to the atmosphere. The mechanism for conveying the smoke had been installed in 1910 by an architect employed by the landlord from whom the innkeeper had taken the premises on lease. However, the fact that the defect arose from the architect's negligence did not prevent liability from being imposed on the innkeeper. The relevant portion of the judgment is as follows:

> "Where the occupier of premises agrees for reward that a person shall have the right to enter and use them for a mutually contemplated purpose, the contract between the parties (unless it provides to the contrary) contains an implied warranty that the premises are as safe for that purpose as reasonable care and skill on the part of anyone can make them. The rule is subject to the limitation that the Defendant is not to be held responsible for defects which could not have been discovered by reasonable care or skill on the part of any person concerned with the construction, alteration, repair, or maintenance of the premises: and the head-note to Francis v. Cockrell must to this extent be corrected. But subject to this limitation it matters not whether the lack of care or skill be that of the Defendant or his servants, or that of an independent contractor or his servants, or whether the negligence takes place before or after the occupation by the Defendant of the premises."

94. To the common law duty of care is at times added a further obligation which too the occupier must discharge in order that his duty to care can be said to have been fully discharged. Such duties are often cast under statutes enacted by the legislature or in Rules & Regulations framed in exercise of powers delegated under such enactments. These additional safeguards against injury to life and limb of innocent parties who are working in the premises or who visit such premises, in large numbers, are in public interest and imply that even the 'State' in all its manifestations is concerned

about the safety of those visiting such public places, be it a cinema hall as in the case at hand or any other place of entertainment or a place where people go for any other purpose whether as contractual visitors or otherwise. The existence of such a statutory duty especially one that concerns safety of the visitors adds another dimension to the duty to care to which we shall presently advert. But before we do so we need to examine whether any such statutory duty was cast upon the occupier of the cinema and if so what was the nature of that duty.

95. The Cinematograph Act, 1952 inter alia regulates exhibition of films by means of cinematographs. Section 10 of the Act, provides that save as otherwise provided under Part III of the Act no person shall give an exhibition by means of a cinematograph elsewhere them in a place licensed under this part or otherwise than in compliance with any conditions and restrictions imposed by such license. Section 12 of the Act stipulates the restrictions on powers of the licensing Authority and forbids grant of a license except where he is satisfied that the rules made under Part III have been substantially complied with and adequate precautions have been taken in the place in respect of which the license is to be given to provide for safety of persons attending exhibitions therein. Section 16 of the Act empowers the Government to make rules under Part III of the Act, which part as noticed above also makes safety of persons attending the exhibition an important requirement. Rule 10(1) of the Delhi Cinematograph Rules framed in exercise of the said power explicitly makes the licensee responsible for the safety of those attending the exhibition of films. It reads:

> "10(1) The licensee shall be responsible for compliance with the provisions of these rules and with the conditions of his license, for the maintenance of the licensed premises at all times and in all respects in conformity with the standards prescribed by these rules and for taking all necessary measures before any cinematograph exhibition is commenced to ensure the safety of the public and his employees against fire and other accidents.
>
> (2) The licensee or some responsible person nominated by him in writing for the purpose shall be in general charge of the licensed premises and cinematograph during the whole time where any exhibition is in progress." (emphasis supplied)

96. The rules make further provisions for safety of the cinema goers. For instance Rules 24 and 37 of the Delhi Cinematograph Act, 1953 provide for attendants to carry electric torches for use in emergency and for keeping the fire appliances in working order and incharge of some person specially appointed for the purpose. The said two rules may also be extracted at this stage:

> "24. Attendants and all members of the staff employed in the building during an exhibition shall carry electric torches for use in emergency in the event of failure of the lighting.
>
> 37."Before the commencement of each performance the cinematograph operator shall satisfy himself that the fire appliances, intended for use within the enclosure are in working order, and during the performance such appliances shall be in the charge

> of some person specially appointed for that purpose, who shall see that they are kept constantly available for use."

97. The First Schedule to the DCR 1953 compliance whereof is essential for grant and renewal deals extensively with several aspects most if not all of which deal with the safety of the cinema goers. For instance Para 3 of the schedule deals with external walls, Para 6 of the schedule deals with the number of persons to be admitted, Para 7 with seating within the hall, Para 8 with gangways, Para 9 with stairways, Para 10 with exits, Para 13 with ventilation, Para 15 with Parking, Para 16 with fire precautions, Para 34(1) with illumination of exits, passages, corridors and stairways, Paras 35 and 36 with emergency lights.

98. A conspectus of the provisions of the Act and the rules referred to above shows that the duty to "ensure safety" of those entering a cinema hall for watching the exhibition of a film, is cast upon the occupier of the hall. The use of words "taking all necessary measures before a cinematograph exhibition is commenced to ensure safety of the public and his employees against fair and other accidents" leaves no manner of doubt that apart from the common law duty to care, the statutory provisions too cast such an obligation upon the licence/occupier of the cinema hall.

99. That brings us to the question whether and if so what is the effect of a statutory obligation to care for the safety of the visitors to a cinema hall, where a duty to care otherwise exists under the common law. The answer can be best provided by a reference to the English decision in Lochgelly Iron & Coal Co. Ltd. v. M'Mullan, (1934) AC 1. A reading of this case would suggest that where a duty of care exists under common law, and this duty is additionally supported and clarified by statutory provisions, a breach of the statutory duty would be proof enough of negligence. It would not be open to the defendant in such a case to argue that the harm was not foreseeable, since "the very object of the legislation is to put that particular precaution beyond controversy".

100. The import and significance of the case is explained in Clerk & Lindsell on Torts (Twentieth Edition) as follows:

> "In Lochgelly Iron & Coal Co Ltd v. M'Mullan, the House of Lords came close to equating an action for breach of statutory duty with an action in negligence. Lord Atkin said that all that was necessary to show "is a duty to take care to avoid injuring; and if the particular care to be taken is prescribed by statute, and the duty to the injured person to take the care is likewise imposed by statute, and the breach is proved, all the essentials of negligence are present". Negligence did not depend on the Court agreeing with the legislature that the precaution ought to have been taken, because the "very object of the legislation is to put that particular precaution beyond controversy". On this approach breach of a statutory duty constitutes negligence per se, but it applies only to legislation which is designed to prevent a particular mischief in respect of which the defendant is already under a duty in common law. Failure to meet the prescribed statutory standard is then treated as unreasonable conduct amounting to negligence, because a reasonable man would not ignore precautions required by statute, and the defendant cannot claim that the harm was unforeseeable

> because the legislature has already anticipated it. The statutory standard "crystallises" the question of what constitutes carelessness. On the other hand, where legislation does not deal with circumstances in which there is an existing common law duty, then, unless expressly stated, breach of the statute would not give rise to an action, because the damages may greatly exceed the penalty considered appropriate by the legislature."

101. 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. In the former case, the occupier may be expected to ensure that the pool is safe for use by the guests in the hotel, in that the depth is safe for those using the diving board if any, that life guards are on duty when children or other guests are using the pool, that immediate medical succor is provided to those who may meet with any accident, and so on. The nature of duty is in that sense different from that of cinema owner/occupier, where all these may not form part of his duty to care. In the case of a cinema hall the nature of an occupier's duty to care may, inter alia, require him to ensure rapid dispersal from the hall in the event of any fire or other emergency, and for that purpose to provide suitable gangways and keep them clear of any obstruction, to provide proper exits, to keep the exit signs illuminated, to provide emergency lighting, to provide fire fighting systems, alarm systems and to employ and keep trained personnel on duty whenever an exhibition of cinematograph is in progress.

102. 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.

103. In the case of gross negligence prosecution and damages may be claimed simultaneously and not necessarily in the alternative. We may at this stage refer to a few pronouncements to illustrate that the duty to care and the nature of care expected of any person accused of committing an offence under Section 304A IPC has always been seen in the fact situations in which the question arose. In Bhalchandra Waman Pathe v. State of Maharashtra 1968 Mah. L.J. 423 (SC) this Court was dealing with a case where the regulations framed by the Commissioner of Police, under the Bombay Police Act, required the driver of car to look ahead and see whether there was any pedestrian in the crossing and if there was one to wait till he crossed the carriage way. The accused in that case had failed to take care and do that, resulting in the death of a pedestrian who was crossing the road. The

question that fell for consideration was whether the driver was rash or negligent. This Court held that since the speed limit was 35 miles per hour, and since the accused was driving the car at 35 miles an hour, there was no rashness on his part in the absence of any other circumstance showing that he was driving at a reckless speed. Even so the charge of negligence was held proved against the accused as he had breached the duty cast upon him to see whether there was any pedestrian to the pedestrian crossing. Law, observed this Court, enjoined upon him and ordinary human prudence required him to do so. Failure of the accused to exercise that reasonable care and caution rendered him liable in criminal law to a conviction under Section 304A of the IPC. This Court approved the ratio of the decisions in Idu Beg and Nidamarti cases (supra), that distinguished 'rashness' and 'negligence', and held that while rashness implies recklessness or indifference to consequences, negligence arises from neglect of a civic duty of circumspection, "which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted." Rashness, observed this Court, was undoubtedly a graver offence.

104. In Bhalchandra @ Bapu and Anr. v. State of Maharashtra, 1968 (3) SCR 766, this Court was dealing with a case in which an explosion in a factory manufacturing crackers had caused the death of some of the workers and injured others. The findings recorded by the Courts below was that the accused had in their possession unauthorized explosives in contravention of the Act and the Rules and had committed several breaches of those Rules and the conditions of the license issued to them. Relying upon the decisions of this Court in Kurban Hussein's case (supra) and Suleman Rahiman Mulani's case (supra), it was contended that mere violation of Rules or terms of a licence would not make the accused liable for any punitive action against them. The decisions of this Court in Kurban Hussein's and Suleman Rahiman Mulani's cases (supra) were distinguished by this Court and the conviction of the accused under Section 304A IPC upheld in the following words:

> "...The facts of the present case are somewhat different and distinguishable from those of the above two cases as will be clear from a close examination of the material evidence relating to the substances which were being used in the manufacture of the fire works etc. in the factory of the appellants...
>
> xx xx xx ...Although there was no direct evidence of the immediate cause of the explosion but indisputably the explosives the possession of which was prohibited under the notifications issued under the Act were found in the shops or the premises where the appellants carried on their business and the substances that have been mentioned which were of a highly hazardous and dangerous nature were apparently being used in the manufacture of the fire works since they were found at the scene of the explosion, (vide the evidence mentioned before and the finding of the trial court and the Additional Sessions Judge). As stated by Dindeshchandra PW 10 these explosives had sensitive compositions and even friction or percussion could cause explosion. It is further proved that in the factory itself where the explosion took place the persons who were employed were mostly women who brought their small children with them and young children below the age of 18 had been employed in the manufacture of the fire works etc. The factory was situate in close proximity to residential quarters. It became therefore all the more incumbent on the appellants to

have completely avoided the use of highly sensitive compositions of the nature mentioned above.

The decision which is apposite to the present case is the one recently delivered by this Court on April 3, 1968 in Rustom Sherior Irani v. State of Maharashtra. There the chimney of a bakery had collapsed and 11 persons were killed and certain persons were injured. The appellant had submitted no plan for the alteration of the chimney for the third time and had asked just a mason to remove the iron pipe which had corroded and to bring the height of the chimney to 65 feet. The mason had told him that while the work was being executed it was unnecessary to completely keep the bakery closed except during the period the repair work was being done. After the chimney fell down a number of officers visited the spot and inspected the bakery. The Chief Inspector of Boilers was of the opinion that the cause of the collapse of the chimney was the explosion which occurred in it because of the products of combustion and gases not being permitted to escape freely as a pipe of 6 inches diameter had been put instead of 12 inches diameter. It is unnecessary to refer to the detailed discussion of the evidence. It was established that the construction of the new chimney had been done without the advice of a properly qualified person. The argument raised was on the lines similar to the one which had been advanced in Kurban Hussein Mohammedali Rangwalla v. State of Maharashtra. It was maintained that no negligence on the part of the appellant had been established and it was on account of the negligence of the mason that the chimney had fallen down. This Court was of the view that the proximate and efficient cause of the deaths was the negligence of the appellant in choosing a pipe of 6 inches diameter and asking a mason (who was apparently not a qualified person) to carry out the alterations and also continuing working atleast one oven there during the period while the alterations to the chimney were being made."

105. This Court referred with approval to Queen Empress v. Bhutan ILR XVI All. 472 and Kamr-ud-din v. King Emperor 1905 PR 22(Cr) and English decisions in Regina v. David Dant, 169 English Reports (C.C.) 1517 and Rex. v. Pittwood (1902) 19 TLR 37 to hold that criminal negligence can be found on varying sets of circumstances, and that the tests applied in the said cases including the list of direct or efficient cause was fully applicable to the case at hand. It is noteworthy that in Rex. v. Pittwood (supra), the prisoner was charged with manslaughter on the ground that he had been negligent in not closing a gate when a train passed which it was his duty to do with the result that White who was in a hay cart was killed while the cart was struck by the train which came when it was crossing the line. The Court had in that case, held the prisoner liable as it was his duty to keep the gate shut to protect the public against an oncoming train. This act of misfeasance was held to constitute gross negligence in the discharge of his duty towards the public crossing the road, amounting to an offence of manslaughter.

106. In S.N. Hussain's case (supra), this Court was dealing with an R.T.C. bus that met with an accident at a manned railway level crossing which was in the charge of a gateman whose duty it was to close the gate when the train was expected to pass by. When the bus reached the level crossing the

gate was open. The accused- bus driver finding the gate open crossed the meter gauge track when suddenly a goods train dashed against the bus on the rear side with the result that the bus was thrown off course causing serious injuries to several passengers, one of whom was killed in the accident. The appellant's defense was that he was neither rash nor negligent and the accident was unavoidable for he did not realize that a goods train was passing at the time and since the gate was open he crossed the railway crossing absolutely oblivious of the fact that a train was approaching.

107. The Trial Court accepted that explanation and acquitted the accused. The High Court reversed the order and convicted him. This Court relying upon the definition of criminal rashness and criminal negligence given by Straight J. in Empress v. Idu beg (supra) and in Bhalchandra Waman Pathe v. State of Maharashtra (supra) held that where a railway level crossing was unmanned, it may be right to insist that the driver of the vehicle should stop the vehicle, look both ways to see if a train is approaching and thereafter drive the vehicle after satisfying that there was no danger in crossing the railway track. Where the level crossing was protected by a gateman and the gateman opens out the gate inviting the vehicles to pass, it will be too much to expect the driver to stop his vehicle and look out for any approaching train. The Court accordingly acquitted the appellant of the offence punishable under Section 304A IPC.

108. A conspectus of the decisions quoted above reveals that an offence under Section 304A IPC may arise under a variety of circumstances, ranging from reckless driving of vehicles to negligent handling of explosives in a factory. In every case, this Court has been mindful to determine the nature of care which ought to have been exercised by the accused person in the context of all the facts and circumstances of that case. Moreover, this Court has been careful while applying or distinguishing preceding case law relating to Section 304A to read each case in the context of its own facts, without deriving from it any general propositions to be applied in all cases dealing with the same offence. Therefore, the question of the nature of care which ought to have been exercised by the occupiers of Uphaar Cinema, as ordinary prudent businessmen, must be decided solely on the totality of the facts and circumstances of the present case.

109. In the case at hand, the claim for compensation has already been awarded by the High Court and affirmed by this Court, no matter against the company as the owner of the cinema hall. Dealing with the question of negligence, this Court in Municipal Council of Delhi, Delhi v. Association of Victims for Uphaar Tragedy and Ors. (2011) 14 SCC 481 observed:

> "27. At the outset it should be noted that the causes for the calamity have been very exhaustively considered by the High Court and it has recorded a categorical finding about the negligence and the liability on the part of the licensee and the DVB. On the examination of the records, we agree with the High Court that such a catastrophic incident would not have happened if the parapet wall had not been raised to the roof level. If the said wall had not been raised, the fumes would have dispersed in the atmospheric air. Secondly if one of the exits in the balcony had not been blocked by construction of an owner's box and if the right side gangway had not been closed by fixing seats, the visitors in the balcony could have easily dispersed through the other gangway and exit into the unaffected staircase. Thirdly if the cars had not been

parked in the immediate vicinity of the transformer room and appropriate pit had been made for draining of transformer oil, the oil would not have leaked into the passage nor would the burning oil lighted the cars, as the fire would have been restricted only to the transformer room. Even if one of the three causes for which the theatre owner was responsible, was absent, the calamity would not have occurred. The Licensee could not point out any error in those findings. Ultimately therefore the contention of the licensee before us was not to deny liability but only to reduce the quantum of liability fastened by the High Court and to increase the share of the liability of the three statutory authorities.

xxx xxx xxx

57. The licensee argued that the entire liability should be placed upon the DVB. It was contended that DVB have installed a transformer of a capacity of 1000 KV without obtaining the statutory sanction/approval and without providing all the safety measures which it was duty bound to provide under the relevant Electricity Rules, and therefore, DVB alone should be responsible for the tragedy. This contention has no merit. In fact none in the main hall (ground floor of the theatre) died. Those on the second floor also escaped. It is only those in the balcony caught in noxious fumes, which died of asphyxiation. The deaths were on account of the negligence and greed on the part of the licensee in regard to installation of additional seats, in regard to closing of an exit door, parking of cars in front of transformer room by increasing parking from 15 to 35 and other acts. We therefore reject the contention that DVB should be made exclusively liable to pay the compensation. We have already held that the Licensing Authority and MCD are not liable. Therefore, the liability will be 85% (Licensee) and 15% (DVB).”

110. Mr. Jethmalani, however, argued that the findings recorded by this Court while dealing with the claim for payment of damages could not be made a basis for holding the appellant-Ansal Brothers guilty of an offence punishable under Section 304A of the IPC, not only because those findings were not recorded in relation to the appellants but also because the standard of proof required for award of compensation was different from that required to prove a criminal charge. There is merit in that contention. The standard of proof required being different, simply because damages have been awarded against the owner of the cinema hall can be no reason why the occupier should be found guilty of gross negligence required to be proved for an offence under Section 304A. The claim for payment of compensation was at any rate made and awarded against the company who owned the cinema hall. This Court cannot in that view make use of the findings recorded in the compensation case nor is it otherwise necessary for us to do so for the evidence adduced at the trial is sufficient for us to independently determine the question of negligence as also the criminal liability of the occupier of the cinema arising from the same.

111. The nature of care in the case of cinema theatres would depend upon three primary factors that the occupier of the cinema must at all times bear in mind. The first is that the cinema hall is an enclosed and necessarily a dark space to which public at large have access on payment of a price for

the ticket that entitles him to watch the exhibition of a cinematograph. Such theatres, at any given point of time, admit large crowds of people whose safety is the obligation of the occupier till such time they leave the precincts of the theatre. The duty to take care regarding the safety of those admitted to watch an exhibition rests with the occupier who can and ought to even by the most ordinary standards of prudence foresee that in the event of anything untoward happening whether out of a fire incident or otherwise, those inside the cinema premises can be safe only if they exit from the same as rapidly as possible. Any delay whether on account of obstruction in or around the exit points or in the gangways can be reasonably foreseen by any prudent businessman running the business of exhibition of cinematographs to be extremely hazardous and at times suicidal, with the potential of claiming human lives whether out of a stampede, panic or asphyxiation in the event of a fire. It does not require any extra expertise for a cinema owner or the occupier of a cinema theatre to foresee such consequences and to take remedial steps to prevent the same as a part of his duty to care towards those visiting the theatre.

112. The second and equally important dimension relevant to the duty of an occupier of a cinema theatre concerns the statutory provisions that regulate such duties and make certain safety measures essential. As previously discussed, the effect of such statutory provisions where the nature of care is specifically outlined is that an occupier cannot argue in defence that any danger arising out of violation or non-adherence to the provisions of the statute was not reasonably foreseeable by him. The decision of the House of Lords in Lochgelly's case (supra) succinctly explains "the effect of an additional statutory burden cast upon an occupier where a common law duty already exists."

113. The third dimension that must also be constantly borne in mind while determining whether the occupier had breached his duty to care towards the safety of the patrons is "that degree of care which an occupier is required to take is commensurate with the risk created" as held by Lord Macmillan in Read v. J. Lyons & Co. Ltd. [1947] AC 156 and an earlier decision in Glasgow Corp v. Muir (1943) AC 448. The application of that proposition is appropriate in the case at hand where the installation of a DVB transformer within the cinema premises had increased the degree of risk on account of fire hazard which resultantly enhanced the degree of care expected of the occupiers in maintenance of the safety measures for the safety of those inside the theatre.

114. Summarising the common law duty as enhanced and reinforced by the provisions of Cinematograph Act, 1952 and the DCR, 1953, the appellant- Ansal brothers as occupiers of the cinema were duty bound to take care and such care included the care to:

> (i) To provide a seating arrangement which ensured easy access to exits to all patrons in the event of an emergency, wherever they may be seated.
>
> (ii) To provide vertical and horizontal gangways of appropriate width along all sides of the auditorium/balcony as well as down the centre of the seating accommodation to provide convenient access to the exits.
>
> (iii) To provide an adequate number of well-marked exits suitably spaced along both sides of the auditorium/balcony and along the back thereof, leading directly into at

least two independent thoroughfares so as to provide speedy egress to the patrons.

(iv) To provide at least two stairways of adequate width for public use, providing access to every upper floor in the building.

(v) To ensure that there was no obstruction in the gangways and other pathways to the exits, as well as the staircases leading to open space.

(vi) To provide emergency lighting and well-lit exit signs for use in the event of a power failure or other emergency in order to guide patrons from out of the dark.

(vii) To put in place a working public address and/or alarm system to warn patrons in the event of any danger so that they may exit from the premises without delay or loss of time.

(viii) To provide an adequate number of fire extinguishers and/or other fire-fighting equipment and to keep them readily available for use in an emergency at all times.

(ix) To appoint an adequate number of torch men and persons in charge of the fire-fighting equipment to be present throughout the duration of a film exhibition to aid and guide patrons out of the theatre as and when such a need arises.

(viii) Whether the accused were negligent and if so, whether the negligence was gross:

115. The Courts below have concurrently found that the occupiers of the cinema building had committed several deviations from the sanctioned building plan apart from breaches of statutory provisions. These deviations and breaches may not have directly contributed to the death of the victims in the instant case but the same cannot be said to be wholly irrelevant for purposes of determining whether or not the occupiers had neglected their duty to care and if they had, whether such neglect was gross in nature. The concurrent findings of the Courts below in the nature of deviations from the sanctioned building plan of the cinema and the statutory requirements may be enumerated as under:-

(1) That the occupiers permitted the installation of a DVB transformer within the cinema premises, although the building plan did not envisage or permit any such installation. The occupier's contention that the installation of the transformer was under coercion remained unsubstantiated.

(2) That the rear parapet wall behind the transformer room was constructed upto the ceiling height thereby preventing smoke rising from the burning transformer oil and the cars parked in the parking area from dispersing into the open atmosphere.

(3) That the stairway leading to the terrace was obstructed by the installation of a full width door in the staircase landing as well as construction of a reception counter in the staircase leading to the terrace by Sarin Associates one of the tenants inducted by the owners.

(4) That the exhaust fans opened into the staircase rather than into an open space thereby defeating the purpose of their installation.

(5) That a homeopathic dispensary was constructed above the ramp behind the transformer room which was found to be and described as a fire hazard during MCD inspections since 1983.

(6)That the staircase around the lift leading to the basement was being used by M/s Sehgal Carpets by conversion of that area into an office was an additional hazard and against the sanctioned plan.

(7) That the enclosure of the open space adjoining the transformer room to be used as a ticket counter and the creation of a glazed verandah next to the Manager's room were also deviations from the building plan.

(8) That conversion of the Operator room on the second floor into an office-cum-bar room too was a deviation.

(9) That letting out of the top floor as office space with wooden partitions was also a deviation and was pointed out to be a safety hazard during fire safety inspections.

(10) That out of 22 fire extinguishers seized after the incident from various parts of the building including the parking lot and balcony, 10 were empty, 4 were not working properly while 1 was leaking from the top. This meant that only 7 of such extinguishers were in working condition.

(11) That neither the Projector Operator nor any other person present during the exhibition of the cinematograph was trained in fire fighting as required in DCR 1953.

116. The above deviations, it was rightly contended by Mr. Jethmalani did not constitute the causa causans for the death of the victims in the instant case. Even so two inferences are clearly available from these deviations namely (i) That the occupiers of the cinema building were not sensitive towards the demands of safety of the patrons and amply showed that the safety of the visitors to the theatre was a matter of low priority for the occupiers and (ii) That the deviations raised the level of risk to the safety of the patrons which in turn required the occupiers to proportionately raise the level of their vigil and the degree of care in regard to the safety of those visiting the cinema. Instead of removing the deviations and the perceived fire hazards and thereby reducing the risk of exposing the patrons to avoidable dangers to their safety the occupiers committed several breaches that directly contributed to the loss of valuable human lives. For instance both the Courts have concurrently held the following breaches to have been established, by the evidence adduced by the prosecution:

> 1) That the cinema did not have any functional Public Address System necessary to sound an alarm in the event of a fire or other emergency. The PA system of the cinema was found to be dysfunctional at the time of the occurrence hence could not be used to warn or to sound an alarm to those inside the cinema to exit from the hall and the balcony.

2) That the emergency lighting even though an essential requirement and so also the well-lit exits stipulated under the DCR 1953 were conspicuous by their absence. The failure of the electric supply on account of tripping of the main supply lines consequently plunged the cinema hall and the balcony area into darkness leaving those inside the balcony panic stricken and groping in the dark to find exits in which process they got fatally exposed to the carbon monoxide laden smoke that had filled the hall.

3) That blocking of the vertical gangway along the rightmost wall and the narrowing of the vertical gangway along the right side of the middle exit by installation of additional seats had the effect of depriving the patrons of the facility to use the right side gangway and the gangway along the middle exit for quick dispersal from the balcony

4) That the closure of the right side exit in the balcony area by installation of a private eight-seater box permanently cut off access to the right side staircase and thereby violated not only the DCR 1953 but also prevented the patrons from using that exit and the right side stairway for quick dispersal from the balcony.

5) That the introduction of the new exit in the left wing of the balcony in lieu of the closed right side exit did not make up for the breach of Para 10 (4), First Schedule of DCR 1953 which mandates that exits on both sides of the auditorium/balcony.

6) That failure to introduce fourth exit even when the total number of seats in the balcony had gone above 300 with the addition of 15 more seats installed in 1980, further compromised the safety requirements statutorily prescribed under the DCR.

7) That bolting of the middle entry/exit doors leading into the foyer obstructed the flow of patrons out of the balcony exposing them to poisonous gas that spread into the hall for a longer period then what was safe for the patrons to survive.

8) That the absence of any staff members to open the exit gates and to generally assist the patrons in quick dispersal from the balcony resulted in the patrons inhaling poisonous gas and dying because of asphyxiation.

9) That the bolting of the door leading from the foyer into the right side staircase and outside which had to be forced open also prevented the quick dispersal and led to a large number of causalities.

10) That construction of the refreshment counter near the exit gate of the first floor and another near the second floor inhibited free passage of the patrons.

117. That the breaches enumerated above have been proved by the evidence adduced at the trial is concluded by the concurrent findings recorded by the two Courts below. There is, in our opinion, no

perversity in the conclusions drawn by the Courts below on the aspects enumerated above. In the light of those conclusions it can be safely said that the occupiers had committed a breach of their duty to care and were, therefore, negligent.

118. The argument that the incident in question was not reasonably foreseeable must in the light of what is stated above be rejected. So also, the argument that since no untoward incident had occurred for many years prior to the occurrence that claimed so many lives, the same indicated that the occurrence was not reasonable foreseeable deserves to be mentioned only to be rejected. A similar contention had in fact been rejected by this Court even in Kurban Hussein's case (supra), where this Court said :

> "In particular it is urged that this method of work has been going on for some years and no fire had broken out and this shows that though there may have been possible danger to human life from such fire or combustible matter there was no probable danger. We are unable to accept this contention. The fact that there was no fire earlier in this room even though the process had been going on for some years is not a criterion for determining whether the omission was such as would result in probable danger to human life."

119. To the same effect is the observation made by this Court in State through PS Lodhi Colony, New Delhi v. Sanjeev Nanda (2012) 8 SCC 450, where this Court held that just because the accused in that case had driven for sixteen kilometers without any untoward incident did not by itself provide him a defence, or prove his innocence.

(viii) Whether the accused were negligent and if so, whether the negligence was gross:

120. The question then is whether the negligence of Ansal brothers-the occupiers of the cinema was so gross so as to be culpable under Section 304A of the IPC. Our answer to that question is in the affirmative. The reasons are not far to seek. In the first place the degree of care expected from an occupier of a place which is frequented everyday by hundreds and if not thousands is very high in comparison to any other place that is less frequented or more sparingly used for public functions . The higher the number of visitors to a place and the greater the frequency of such visits, the higher would be the degree of care required to be observed for their safety. The duty is continuing which starts with every exhibition of cinematograph and continues till the patrons safely exit from the cinema complex. That the patrons are admitted to the cinema for a price, makes them contractual invitees or visitors qua whom the duty to care is even otherwise higher than others. The need for high degree of care for the safety of the visitors to such public places offering entertainment is evident from the fact that the Parliament has enacted the Cinematograph Act and the Rules, which cast specific obligations upon the owners/occupiers/licensees with a view to ensuring the safety of those frequenting such places. The annual inspections and the requirements of No Objection Certificates to be obtained from authorities concerned is yet another indicator of how important the law considers the safety of the patrons to be. Any question as to the nature and the extent of breach must therefore be seen in the backdrop of the above duties and obligations that arise both under the common law and the statutory provisions alike. Judged in the above backdrop it is evident that the

occupiers in the present case had showed scant regard both for the letter of law as also their duty under the common law to care for the safety of their patrons. The occupiers not only committed deviations from the sanctioned building plan that heightened the dangers to the safety of the visitors but continued to operate the cinema in contemptuous disregard for the requirements of law in the process exposing the patrons to a high degree of risk to their lives which some of them eventually lost in the incident in question. Far from taking any additional care towards safety of the visitors to the cinema the occupiers asked for permission to place additional seats that further compromised the safety requirements and raised the level of risks to the patrons. The history of litigation between the occupiers on the one hand and the Government on the other regarding the removal of the additional seats permitted during national emergency and their opposition to the concerns expressed by the authorities on account of increased fire hazards as also their insistence that the addition or continuance of the seats would not affect the safety requirements of the patrons clearly showed that they were more concerned with making a little more money out of the few additional seats that were added to the cinema in the balcony rather than maintaining the required standards of safety in discharge of the common law duty but also under the provisions of the DCR 1953.

(ix) Further contentions urged in defence and findings thereon:

121. Appearing for the appellant Sushil Ansal, Mr. Jethmalani strenuously argued that the death of 59 persons in the incident in question was caused by the fire that started from the DVB transformer, which was poorly maintained and shabbily repaired by the DVB officials on the morning of 13th June, 1997 the date of incident. The causa causans for the loss of human lives thus was the transformer that caught fire because of the neglect of the DVB officials who did not even have a crimping machine to repair the transformer properly. The absence of an oil soaking pit in the transformer room was also a reason for the oil to spill out from the transformer room to spread the fire to the parking area from where smoke containing lethal carbon monoxide rose, and due to chimney effect, entered the hall to cause asphyxiation to those inside the balcony. He urged that there was no evidence that any death had taken place inside the balcony which proved that most if not all the patrons sitting in the balcony had exited from that area, but died on account of the poisonous effect of the gas enough to kill human being within minutes of exposure. Heavy reliance was placed by Mr. Jethmalani upon the decision of this Court in Kurban Hussein's case (supra) in support of his submission that the causa causans in the case at hand was the fire in the DVB transformer and not the alleged deviations in the building plan or the seating arrangement or the obstructions in the staircase, that led out of the cinema precincts.

122. Mr. Harish Salve, appearing for the CBI and Mr. K.T.S. Tulsi appearing for the Victims Association contended that while there was no quarrel with the proposition that death must be shown to have occurred as a direct, immediate or proximate result of the act of rashness or negligence, it was not correct to say that the deaths in this case had occurred because of the fire in the transformer. It was also not correct to draw any analogy on facts with any other decided case including that of Kurban Hussein (supra). Failure of the victims to rapidly exit from the smoke filled atmosphere in the balcony area because of obstructions and deviations proved at the trial was the real, direct and immediate cause for the death of the victims in the present case who would have safely escaped the poisonous carbon monoxide gas only if there were proper gangways, exits,

emergency lights, an alarm system in working condition and human assistance available to those trapped inside the hall.

123. We have at some length dealt with the ingredients of an offence punishable under Section 304A of the IPC in the earlier part of this judgment. One of those ingredients indeed is that the rash or negligent act of the accused ought to be the direct, immediate and proximate cause of the death. We have in that regard referred to the decisions of this Court to which we need not refer again. The principle of law that death must be shown to be the direct, immediate and proximate result of the rash or negligent act is well accepted and not in issue before us as an abstract proposition. What is argued and what falls for our determination is whether the causa causans in the case at hand was the fire in the DVB transformer as argued by the defence or the failure of the victims to rapidly exit from the balcony area. Two aspects in this connection need be borne in mind. The first is that the victims in the instant case did not die of burn injuries. All of them died because of asphyxiation on account of prolonged exposure to poisonous gases that filled the cinema hall including the balcony area. Fire, whatever may have been its source, whether from the DVB transformer or otherwise, was the causa sine qua non for without fire there would be no smoke possible and but for smoke in the balcony area there would have been no casualities. That is not, however, the same thing as saying that it was the fire or the resultant smoke that was the causa causans. It was the inability of the victims to move out of the smoke filled area that was the direct cause of their death. Placed in a smoke filled atmosphere any one would distinctively try to escape from it to save himself. If such escape were to be delayed or prevented the causa causans for death is not the smoke but the factors that prevent or delay such escape. Let us assume for instance that even when there are adequate number of exits, gangways and all other safety measures in place but the exits are locked preventing people from escaping. The cause of death would in such case be the act of preventing people from exiting from the smoke filled hall, which may depending upon whether the act was deliberately intended to cause death or unintended due to negligence, amount to culpable homicide amounting to murder or an act of gross negligence punishable under Section 304A. Similarly take a case where instead of four exits required under the relevant Rules, the owner of a cinema provides only one exit, which prevents the patrons from exiting rapidly from the smoke filled atmosphere, the causa causans would be the negligent act of providing only one exit instead of four required for the purpose.

124. It would in such circumstances make no difference whether the fire had started from a source within the cinema complex or outside, or whether the occupiers of the cinema were responsible for the fire or someone else. The important question to ask is what the immediate cause of the death was. If failure to exit was the immediate cause of death nothing further need be considered for that would constitute the causa causans. That is what happened in the case at hand. Smoke entered the cinema hall and the balcony but escape was prevented or at least delayed because of breach of the common law and statutory duty to care.

125. The second aspect is that while the rash or negligent act of the accused must be the causa causans for the death, the question whether and if so what was the causa causans in a given case, would depend upon the fact situation in which the occurrence has taken place and the question arises. This Court has viewed the causa causans in each decided case, in the facts and circumstances of that case. If Hatim's failure to stir the hot wet paint while Rosin was being poured into it was held

to be causa causans, in Kurban Hussein's case (supra), the failure of the motorist to look ahead and see a pedestrian crossing the road even when the motorist was driving within the speed limit prescribed was held to be the causa causans for the death in Bhalchandra Waman Pathe v. State of Maharashtra (supra). In Bhalchandra @ Bapu and Anr. v. State of Maharashtra (supra) where an explosion in a factory manufacturing crackers claimed lives, this Court found that use of explosives with sensitive compositions was the immediate cause of the explosion that killed those working in the factory. In Rustom Sherior Irani's case (supra), this Court found the new chimney of the Bakery was being erected without the advice of a properly qualified person and that the factory owner was responsible for neglect that caused the explosion and not the mason employed by him for erecting the chimney. The decision in Kurban Hussein's case (supra) was cited but distinguished on facts holding that the choice of the low diameter pipe and engaging a mere mason not properly qualified for doing the job were the cause of the accident resulting in causalities.

126. It is in that view, not correct to say that the causa causans in the present case ought to be determined by matching the colours of this case with those of Kurban Hussein's case (supra). The ratio of that case lies not in the peculiar facts in which the question arose but on the statement of law which was borrowed from the judgment of Sir Lawrence Jenkins in Emperor v. Omkar Rampratap (supra). The principle of law enunciated in that case is not under challenge and indeed was fairly conceded by Mr. Salve and Mr. Tulsi. What they argued was that when applied to the facts proved in the present case, the causa causans was not the fire in the transformer but the breaches committed by the occupiers of the cinema which prevented or at least delayed rapid dispersal of the patrons thereby fatally affecting them because of carbon monoxide laden gas in the smoke filling the atmosphere. The causa causans indeed was the closure of the exit on the right side, the closure of the right side gangway, the failure to provide the required number of exits, failure to provide emergency alarm system and even emergency lights or to keep the exit signs illuminated and to provide help to the victims when they needed the same most, all attributable to Ansal brothers, the occupiers of the cinema. We have, therefore, no hesitation in rejecting the argument of Mr. Jethmalani, which he presented with commendable clarity, persuasive skill and tenacity at his command.

127. Mr. Jethamalani next argued that since the licensing authority had on the basis of the no objection certificates issued by the concerned authorities granted and from time to time renewed the Cinema licence, the appellant-Ansal brothers were protected under Section 79 of the IPC for they in good faith believed themselves to be justified in law in exhibiting films with the seating and other arrangements sanctioned under the said licence. Reliance in support of that submission was placed by Mr. Jethmalani, upon the decision of this Court in Raj Kapoor v. Laxman (1980) 2 SCC 175.

128. Mr. Tulsi on the contrary argued that reliance upon Section 79 of the IPC and the decision of this Court in Raj Kapoor's case (supra) misplaced. He urged that immunity from penal action under the provisions of Section 79 of the IPC was founded on good faith which was totally absent in the case at hand where the occupiers of the cinema and even those who were instrumental in the grant and renewal of the licence and no objections were accused and even convicted by the Courts below. There was, therefore, no question of the appellants taking shelter under the licence, the terms whereof were in any case breached by them to the misfortune of those who lost their lives in the incident.

129. Section 79 of the IPC may, at this stage, be extracted:

1 "Section 79. Act done by a person justified, or by mistake of fact believing himself justified, by law - Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it."

130. A reading of the above shows that nothing would constitute an offence under the IPC if the act done is:

> i) Justified in law,
>
> ii) The act is done by a person who by reason of a mistake of fact in good faith believes himself to be justified by law in doing it.

131. In the case at hand the defence relies upon the latter of the two situations, in which the benefit of penal immunity will flow if (a) the person doing the act is acting under a mistake of fact and (b) the person doing the act in good faith believes himself to be justified by law in doing it. The expression 'good faith' is defined in Section 52 of the IPC as under:

> "52. "Good faith".-- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

132. In order that Ansal brothers, occupiers of the cinema could claim the benefit of Section 79, they were required to prove that the belief which they harboured about their act being justified in law was in good faith. The use of expression 'good faith' necessarily brings in the question whether the person concerned had acted with due care and caution. If they had not, part (b) of Section 79 would have no application to the case.

133. The duty to care for the safety of the patrons, we have explained in the earlier part, was cast upon the Ansal brothers occupiers of the cinema both in common law as also in terms of statutory provisions on the subject. We have also held that the evidence adduced at the trial and the concurrent findings recorded by the Courts below, have, established the breach of that duty in several respects. For instance absence of any Public Address System to warn those inside the cinema in the event of any emergency was in the facts and circumstances of the case a part of the duty to care which was breached by the occupiers. This duty was a continuing obligation and had to be strictly discharged in respect of each cinema show conducted in the theatre. The grant of a licence or its renewal by the licensing authority did not in any manner relieve the occupiers of that obligation which was implicit even in the grant and the renewals thereof. Similarly, the requirement that the cinema must have emergency lights, fire extinguishers and that the occupiers must provide help to the patrons in the event of any emergency ensuring rapid dispersal from the enclosed area were obligations that too were implicit in the issue and renewal of the cinematograph licence. Breach of all these obligations could not be justified on the ground that a licence was granted or renewed in favour of the occupiers, licensee and no matter the duty to care towards safety of the patrons was

neglected by the theatre owners or occupiers. Failures in the event of a mishap like the one at hand on account of failure of the occupiers to discharge their legal obligations to take care for the safety of the patrons cannot be held to be immune from prosecution simply because a licence to exhibit the films had been granted or renewed from time to time.

134. The argument that the seating arrangement in the balcony, the placement of the gangways, the number and the positioning of the exits, were matters which were examined and approved by the concerned authority, thereby entitling the occupiers to a bona fide and good faith belief that they were on the right side of law, no doubt looks attractive on first blush but does not stand closer scrutiny. The essence of Section 79 is a belief entertained in good faith about the legitimacy of what is being done by the person concerned. Absence of good faith is enough to deny to him the benefit that he claims. Good faith has in turn to be proved by reference to the attendant circumstances. That is because good faith is a state of mind which can be inferred only from the circumstances surrounding the act in question. The test of ordinary prudence applied to such proved attendant circumstances can help the Court determine whether an act or omission was in good faith or otherwise. Having said that, we would simply recall our findings recorded earlier that the fundamental obligation and duty to care at all times rested with the occupiers of the cinema and the licensee thereof. In the discharge of that duty the occupiers were not entitled to argue that so long as there was a license in their favour, they would not be accountable for the loss of life or limb of anyone qua whom the occupiers owed that duty. The duty to care for the safety of the patrons, even independent of the statutory additions made to the same, required the occupiers to take all such steps and measures, as would have ensured quick dispersal from the cinema building of all the patrons inside the premises in the event of an emergency. The statutory requirements were, in that sense, only additional safeguards which in no way mitigated the common law duty to care, the degree of such care or the manner in which the same was to be discharged.

135. That apart, a seating plan, which was in breach of the statutory provisions and compromised the safety requirements prescribed under the DCR 1953, could hardly support a belief in good faith that exhibition of films with such a plan was legally justified. That is so especially when the repeal of notification dated 30th September, 1976 by which Uphaar was permitted 100 more seats was followed by a demand for removal of the additional seats. Instead of doing so the occupiers/owners assailed that demand in Writ Petition No.1010 of 1979 before the High Court of Delhi in which the High Court directed the authorities to have a fresh look from the stand point of substantial compliance of the provisions of the Cinematograph Act. The High Court observed:

> "11. Proposition No. 3: It has been already made clear above that the relaxation was granted after considering the public health and the fire hazard aspects. It is also clear that the very fact that the relaxation could not be granted after bearing these main considerations in mind would show that there was some rule for the extension of the sitting accommodation in these theatres within the Rules, though the provision of some of the additional seats may perhaps have been to some extent contrary to some of the Rules. It is not necessary for us to speculate on this question. It is enough to say that the result of the cancellation of the relaxation is simply the withdrawal of the relaxation. It does not automatically mean that all the additional seats which were

> installed in the cinema theatres were contrary to the Rules and must, therefore, be dismantled without any consideration as to how many of these seats were in consonance with the Rules and how many of them were contrary to the Rules.
>
> 12. Our finding on proposition No. 3 is, therefore, that the Administration will apply their mind to the additional seats with a view to determine which of them have contravened which rules and to what extent. They will bear in mind that the compliance with the Rules is to be substantial and not rigid and inflexible."

136. If while carrying out the above directive, the authorities concerned turned a blind eye to the fundamental requirement of the Rules by ignoring the closure of the right side exit and gangway prescribed as an essential requirement under DCR 1953, they acted in breach of the rules and in the process endangered the safety of the patrons. We shall presently turn to the question whether the repeal of the notification had the effect of obliging the occupier/licensee of the cinema to remove the seats and restore the gangways and exits as originally sanctioned. But we cannot ignore the fact that the occupiers/licensee of the cinema, had opposed the removal of the additional seats even when the respondents in the writ petition had expressed concerns about the safety of the patrons if the additional seats were not removed which removal it is evident would have by itself resulted in the restoration of the right side gangway. So also the authorities ought to have insisted on the restoration of the right side exit by removal of the eight-seater box which was allowed in the year 1978, ostensibly because with the right side gangway getting closed by additional seats occupying that space the authorities considered the continuance of the right side exit to be of no practical use. Withdrawal of relaxation in the year 1979 ought to have resulted in the reversal of not only the fixing of additional seats but all subsequent decisions that proceeded on the basis thereof. It is difficult to appreciate how even applying the test of substantial compliance the authorities could consider the theatre to be compliant with the DCR 1953 especially in so far as the same related to an important aspect like gangways and exits so very vital for speedy dispersal from the cinema hall. To add further confusion to the already compromised safety situation, the occupiers asked for addition of 15 more seats in the year 1980, which were also allowed, taking the number of seats in the balcony to 302, thereby, raising the requirement of exits from 3 to 4 in terms of para 10(2) of the First Schedule to DCR 1953. This requirement was not relaxable under proviso to Rule 3(3) of DCR 1953 and yet the authorities gave a go by to the same in the process, permitting yet another breach that had the potential and did actually prove to be a safety hazard for those inside the theatre on the fateful day. It is in the above backdrop difficult to accept the submission of the appellant occupiers that they acted in good faith and are, therefore, protected against prosecution under Section 79 of the IPC.

137. There is yet another angle from which the matter can be examined. Proviso to Section 5A of the Cinematograph Act, 1952 protects the applicant seeking issue of a certificate, the distributor and the exhibitor as also any other person to whom the rights in the film may have passed against punishment under any law relating to obscenity in respect of any matter contained in the film for which a certificate has been granted under clauses (a) or (b) of sub-section (1) to Section 5A. It reads:

> "Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause
>
> (a) or clause (b)"

138. The above was added by Act 49 of 1981 with effect from 1st June, 1983. The decision in Raj Kapoor's case (supra) relied upon by Mr. Jethmalani was earlier in point of time and is distinguishable because the question there related to the effect of a certificate issued under Section 5A vis-à-vis the prosecution of the producer, director or the holder of certificate for obscenity punishable under Section 292 of the IPC or any other law for that matter. The addition of proviso to Section 5A (1) (supra) in any case sets the controversy at rest and grants immunity to the person exhibiting a film to the public in accordance with the certificate issued by the board. No such protection against prosecution is, however, available to the holder of a cinema licence against prosecution for a rash or negligent act resulting in the death of anyone visiting the cinema and punishable under Section 304A of the IPC. In the absence of any such protection against prosecution for rash or negligent act resulting in death, unlike the protection that the statute itself grants against prosecution for obscenity, is a circumstance that strongly suggests that no such protection was intended to be given to a licence holder against any such prosecution. The argument that absence of any such protection notwithstanding the occupiers/owners of the cinema may be protected in terms of Section 79 of the IPC is obviously founded on the plea that the appellants were under a "mistake of fact" when they in good faith believed themselves to be justified in law in exhibiting films in the theatre, by reason of a license issued under the Act. The plea that the appellants were under a 'mistake of fact', however, remains unsubstantiated. The concept of mistake of fact has been explained by Russel on Crime in the following words:

> "When a person is ignorant of the existence of relevant facts, or mistaken as to them, his conduct may produce harmful results which he neither intended nor foresaw.
>
> xxx xxx xxx Mistake can be admitted as a defence provided (1) that the state of things believed to exist would, if true, have justified the act done, and (2) the mistake must be reasonable, and (3) that the mistake relates to fact and not to law."

139. Ratanlal and Dhirajlal in their book "Law of Crimes" (23rd Edn.) Page 199 similarly explains the term "mistake" in the following words:

> "'Mistake' is not mere forgetfulness. It is a slip 'made, not by design, but by mischance'. Mistake, as the term is used in jurisprudence, is an erroneous mental condition, conception or conviction induced by ignorance, misapprehension or misunderstanding of the truth, and resulting in some act or omission done or suffered erroneously by one or both of the parties to a transaction, but without its erroneous character being intended or known at that time.

> It may be laid down as a general rule that an alleged offender is deemed to have acted under that state of things which he in good faith and on reasonable grounds believed to exist when he did the act alleged to be an offence."

140. In the case at hand, the appellants-occupiers of the cinema, have not been in a position to identify the facts qua which they were under a mistake nor is it clear as to how any such mistake of fact would have justified their act in law, leave alone satisfy the third requirement of the mistake of fact being reasonable in nature. The three tests referred to by Russel in the passage extracted above are not, therefore, satisfied in the case at hand to entitle the appellant occupiers to the benefit of Section 79 of the IPC.

141. Mr. Jethmalani next contended that the withdrawal of notification dated 30th September, 1976 did not have the effect of creating an obligation for the occupiers of the cinema to remove the additional seats that had been permitted under the said notification. In support of that submission, he placed reliance upon Section 6 of the General Clauses Act, 1897 and two decisions of this Court which according to him support the proposition that the principles underlying Section 6 are attracted even to notifications no matter Section 6 does not in terms apply. Elaborating his submission Mr. Jethmalani contended that the repeal of an enactment does not affect the previous operation of any such enactment or anything duly done or suffered thereunder. On the same principle withdrawal of notification dated 30th September, 1976 could not, according to Mr. Jethmalani, affect the previous operation of the said notification or anything duly done or suffered thereunder. This, contended Mr. Jethmalani, implied that additional seats permitted under notification dated 30th September, 1976 could continue in the theatre, no matter the notification under which they were permitted was withdrawn.

142. We regret our inability to accept that line of reasoning. We say so for reasons more than one. In the first place Section 6 of the General Clauses Act does not, in our opinion, have any application to repeal of any rule, notification or order. The provision makes no reference to repeal of a rule, notification or order. It reads:

> "6. Effect of repeal.- Where this Act, or any 1[Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

143. It is manifest from a reading of the above that the provision applies only to repeal by (i) the General Clauses Act or (ii) by a Central Act or

(iii) by Regulation of any enactment hither to make or hereinafter to be made. The expressions "Central Act" and "Regulation" appearing in Section 6 have been defined in Sections 3(7) and 3(50) of the General Clauses Act, 1897 respectively as under:

"3. Definitions. – In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or contexts, -

xxx xxx xxx (7) "Central Act" shall means an Act of Parliament, and shall include –

(a) an Act of the Dominion Legislature or of the Indain Legislature passed before the commencement of the Constitution, and

(b) an Act made before such commencement by the Governor General in council or the Governor General, acting in a legislative capacity.

xxx xxx xxx (50) "Regulation" shall mean a Regulation made by the President [under article 240 of the Constitution and shall include a Regulation made by the President under article 243 thereof and] a Regulation made by the Central Government under the Government of India At, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935."

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144. There is in the light of the above no gainsaying that Section 6 does not have any application to, for instance, a rule, a notification or a circular whether statutory or otherwise. It is confined to repeal of any enactment already in existence or made after the enactment of the General Clauses Act, 1897 by the General Clauses Act, 1952, or a Central Act or Regulation within the meaning of those terms as defined in Sections 3(7) and 3(50).

145. Secondly, because the decisions in State of Orissa and Ors. v. Titaghur Paper Mills Co. Ltd. and Anr. (1985) Supp SCC 280 and Union of India v. Glaxo India Ltd. and Anr. (2011) 6 SCC 668 do not extend the application of Section 6 to statutory notifications as was sought to be argued by Mr. Jethmalani. In Titaghur Paper Mills Co. Ltd.'s case (supra), this Court was dealing with the supersession of notifications issued under the Orissa Sales Tax Act on the tax liability accrued under the repealed notification. Although this Court held that a tax liability that was already incurred under the repealed notifications would remain unaffected by the repeal of the notification the decision does not go to the extent of holding that Section 6 of the General Clauses Act or the principle underlying the said provisions would be attracted to such repeal. The reasoning for the conclusion of this Court, it appears, is based on first principles more than Section 6 or its relevance to the question of repeal of a notification. This is evident from the following passage from the said decision:

> "66...By repealing and replacing the previous notifications by other notifications, the result was not to wipe out any liability accrued under the previous notifications. If this contention of the Respondents were to be accepted, the result would be startling. It would mean, for example, that when a notification has been issued under Section 5(1) prescribing a rate of tax, and that notification is later superseded by another notification further enhancing the rate of tax, all tax liability under the earlier notification is wiped out and no tax can be collected by the State Government in respect of any transactions effected during the period when the earlier notification was in force."

146. In Glaxo India Ltd.'s case (supra), all that this Court declared was that the effect of a superseding notification would have to be determined on a proper construction of the notification itself and not by any single principle or legal consideration. The decision mentioned Section 6 of the General Clauses Act only to state that it would not apply to notifications. This is evident from the following passage from the said decision:

> "39...The view of this Court in some of the decisions is that the expression "supersession" has to be understood to amount 'to repeal' and when notification is repealed, the provisions of Section 6 of the General Clauses Act would not apply to notifications. The question whether statutory obligations subsist in respect of a period prior to repeal of a provision of a Statute or any subordinate legislation promulgated thereunder has to be ascertained on legal considerations apposite to the particular context. The matter is essentially one of construction. Such problems do not admit of being answered on the basis of any single principle or legal consideration." (emphasis supplied)

147. Thirdly, because the effect of withdrawal of the notification in the instant case may have to be seen and determined on first principles. We find it difficult to appreciate how the power to withdraw a notification, the existence whereof was not disputed by Mr. Jethmalani would remain meaningful and could be effectively exercised if the withdrawal of such a notification was to leave the benefit under the notification flowing in perpetuity. The notification in question permitted additional seats

to be fixed in relaxation of the rules and, if the argument of Mr. Jethmalani was to be accepted, such relaxation and fixation of seats would become irreversible even when the Government could legitimately exercise the power to recall such a relaxation. This would be anomalous and would have the effect of emasculating the power of recall itself. The power would be meaningful and so also its exercise, only if the same could undo whatever had already been done under it prospectively. Such an interpretation would not only recognize the power of withdrawal but also protect the previous operation of the repealed notification no matter limited to the extent that the occupiers had benefitted by fixation of such seats and collection of the price of the tickets sold upto the date of withdrawal.

148. Last but not the least is the fact that the question whether withdrawal of notification dated 30th September, 1976 would have the effect of obliging the occupiers to remove the additional seats could and ought to have been argued before the High Court in the writ petition filed by the occupiers/owners of cinema hall, in Isherdas Sahni & Bros and Anr. v. The Delhi Administration and Ors. AIR 1980 Delhi 147. No such contention was, however, urged before the High Court in support of the challenge to the demand for the removal of the seats which demand was based entirely on assumption that the withdrawal of the notification has had the effect of obliging the owners/occupiers to restore status quo ante. The High Court took the view that recall of the notification would call for a review qua each cinema hall to determine whether the continuance of the seats was substantially compliant with DCR, 1953. The High Court accordingly directed the authorities concerned to have a fresh look applying the test of substantial compliance while determining the liability of the owners/occupiers to remove the additional seats. The occupiers accepted that direction. An exercise was accordingly undertaken though in our view, unsatisfactorily, for the authorities concerned failed to look into the safety requirements which ought to have been given foremost importance in any such process. The least, therefore, that can be said is that the argument that no obligation arose to remove the additional seats by reason of the repeal of the notification dated 30th September, 1976 is untenable not only on merits, but also because the same is no longer available in view of what has been stated above, and the fact that the question stands concluded by the judgment of this Court in Isherdas Sahni's case (supra).

149. We may at this stage deal with a threefold submission made by Mr. Jethmalani. He contended that the appellant Ansal Brothers were entitled to assume that the licensing authority had done its duty and satisfied itself about the premises being adequately safe for those visiting the same. Reliance in support of the submission was made by Mr. Jethmalani upon the English decisions in Green v. Fibreglass Ltd. 1958 (2) QBD 245, Gee v. The Metropolitan Railway Company 1873 VIII Q.B. 161 and Grant v. Sun Shipping Co. Ltd. and Anr. 1948 AC 549.

150. The second limb of Mr. Jethmalani's contention was that having delegated their duties to persons like R.M. Puri whole-time Director and the Managers employed for ensuring safety of those visiting the cinema, the Ansal brothers were entitled to assume that those incharge of their duties would faithfully and effectively discharge the same in a prudent manner. The employers of such employees could not be held vicariously liable under the IPC for the failure of the latter to do what was enjoined upon them in terms of the duties attached to their employment. Support for that proposition was drawn by Mr. Jethmalani from the English decision in Hazeldine v. C.A. Daw and

Son Ltd. and Ors. (1941) 2 KB 343. The third limb of the argument of the learned counsel was that having convicted and sentenced the gatekeeper for the offence punishable under Section 304-A, the High Court could not hold the Ansals guilty or punish them for the same offence since there is no vicarious liability in criminal law.

151. In Gee v. The Metropolitan Railway Company (supra), a train passenger leant on the door of a railway carriage believing it to have been properly fastened, when in fact it was not. This resulted in the door flying open and the passenger getting thrown out of the carriage. The question was whether there was any contributory negligence on the part of the train passenger. The Court held that the passenger was entitled to assume that the door had been properly fastened and that the accident had been caused by the defendants' negligence. The Court observed:

> "Because I am of opinion that any passenger in a railway carriage, who rises for the purpose either of looking out of the window, or dealing with, and touching, and bringing his body in contact with the door for any lawful purpose whatsoever, has a right to assume, and is justified in assuming, that the door is properly fastened; and if by reason of its not being properly fastened his lawful act causes the door to fly open, the accident is caused by the defendants' negligence."

152. The above decision was affirmed by the House of Lords in Grant v. Sun Shipping Co. Ltd. and Anr. (supra) where an injury was caused to a stevedore on a ship when he wrongly assumed that no hatch was left uncovered and unlit and therefore fell into the hatch. The Court in that case also was concerned with the question of contributory negligence. It is noteworthy that the Court qualified the principle stated in Gee v. The Metropolitan Railway Company's case (supra) by holding that a prudent man would guard against the possible negligence of others when experience shows such negligence to be common.

153. In Green v. Fibreglass Ltd. (supra), a cleaning lady was injured due to faulty wiring on the premises where she was invited to work. It was held that the occupiers of the premises should be taken to have discharged their duty to the plaintiff as inviters by employing competent electrical contractors and by taking the precaution of rewiring the premises before they began to occupy the same. If some act was to be performed which called for special knowledge and experience which the inviter could not be expected to possess, he fulfilled his duty of care by employing a qualified and reputable expert to do the work.

154. It appears from a reading of the above cases that the principle that an occupier is entitled to assume that others have done their duty is applicable, provided that experience has not revealed to him that the negligence of others is common, nor did he at any time have reason to believe that his premises was unsafe. It is difficult for the occupiers in the present case to argue that they did not have reason to believe that the premises was unsafe, given the occurrence of a similar fire in 1989, as well as the number of occasions on which defects in their premises had been pointed out to them. Moreover, although Section 12 of the Cinematograph Act did require the licensing authority to take in to account substantial compliance with the rules, as well as existence of adequate safety precautions in the premises, Rule 10(1) of DCR, 1953 unambiguously cast the responsibility for

maintaining such compliance and safety upon the occupier. The Act and Rules are silent regarding the consequences to be faced by a licensing authority who does not fulfill his duty, however, Section 14 of the Cinematograph Act imposes a penalty on the occupier of a licensed premises who violates the conditions of the cinema license. One such condition in the present case was compliance with the First Schedule of the DCR, 1953. Therefore, this is not a situation where the law treats the occupier as an ignorant person who requires experts to verify the safety of his premises. Rather, the Act places an independent obligation upon him to maintain compliance with the rules, irrespective of the assessment of the public authorities.

155. It is, therefore, difficult to accept the argument that the occupiers in the present case blindly accepted the assessment of the inspecting and licensing authorities. If that were to be true, they ought not to have resisted the removal of 43 extra seats in the balcony as ordered by the licensing authority pursuant to the withdrawal of the 1976 notification, and they ought not to have failed to cure the defects in their premises pointed out by the MCD after the inspection in 1983.

156. Reliance by Mr. Jethmalani upon the decision in Hazeldine's case (supra) to support the second limb of his argument is also, in our view, misplaced. That was a case, where the landlord had employed a firm of engineers to adjust, clean and lubricate the machinery of the lift once every month, to repack the glands when needed and to report to him if any repairs were needed. An employee of the engineers engaged for the purpose repacked one of the glands but failed to replace it properly thereby causing the gland to fracture when the lift was worked and an accident in which the plaintiff was injured. The Court held that the landlord had discharged his obligation to keep the lift reasonably safe by employing a competent firm of engineers. The owner of the lift was not, observed the Court, aware of any defect or danger in operating the lift.

157. The fact situation in the case at hand is entirely different. Here the duty to care for the safety of the invitees lies upon the occupiers not only under the common law but even under the statutory enactment. More importantly, the occupiers have, as seen in the earlier parts of this judgment, been aware at all material times, of the statutory requirements and deviations which were repeatedly pointed out by the authorities concerned as a safety hazard for the patrons of the cinema theatre. The staff employed by the occupiers had no role to play in these deviations or their removal. There is nothing on record to suggest that the occupiers had issued instructions to the staff to have the deviations and breaches removed and/or corrected, or that those instructions were not complied with by the latter resulting in the fire incident that claimed human lives. Unlike in Hazeldine's case (supra), the occupiers had not done all that could and ought to have been done by them to avert any tragedy in connection with the use of an unsafe premises frequented by the public for entertainment.

158. Equally untenable is the argument that since the gatekeeper of the balcony has been found guilty and sentenced to imprisonment, the occupiers must be held to be innocent. The argument is an attempt to over-simplify the legal position ignoring the factual matrix in which the prosecution was launched and the appellants found guilty. If the appellants have indeed committed gross negligence resulting in the death of a large number of innocents, they cannot argue that just because one of those found to be equally rash or negligent had been convicted for the very same offence they

must be held to be not at fault.

159. Mr. Jethmalani next argued that the charges framed against the accused-appellants, Sushil and Gopal Ansal were defective inasmuch as the same did not specify the days or period when the offence took place nor even indicate the statutory provisions, rules and regulations allegedly violated by the appellants or accuse the appellants of gross negligence which alone could constitute an offence under Section 304A IPC. These defects, contended the learned counsel, had caused prejudice to the appellants in their defence and ought to vitiate the trial and result in their acquittal. A similar contention, it appears, was urged by the appellants even before the High Court who has referred to the charges framed against the appellants at some length and discussed the law on the point by reference to Sections 211, 215 and Section 464 of the Cr.P.C. to hold that the charges were reasonably clear and that no prejudice in any case had been caused to the appellants to warrant interference with the trial or the conviction of the appellants on that ground. Reliance in support was placed by the High Court upon the decision of this Court in Willie (William) Slaney v. State of Madhya Pradesh (AIR 1956 SC 116) and several later decisions that have reiterated the legal position on the subject. There is in our opinion no error in the view taken by the High Court in this regard. Section 464 of the Cr.P.C. completely answers the contention urged on behalf of the appellants. It in no uncertain terms provides that an error, omission or irregularity in the charge including any misjoinder of charges shall not invalidate any sentence or order passed by a Court of competent jurisdiction unless in the opinion of a Court of appeal, confirmation or revision a failure of justice has in fact been occasioned thereby. The language employed in Section 464 is so plain that the same does not require any elaboration as to the approach to be adopted by the Court. Even so the pronouncements of this Court not only in Slaney's case (supra) but in a long line of subsequent decisions place the matter beyond the pale of any further deliberation on the subject. See K.C. Mathew v. State of Travancore-Cochin AIR 1956 SC 241, Gurbachan Singh v. State of Punjab AIR 1957 SC 823, Eirichh Bhuian v. State of Bihar AIR 1963 SC 1120, State of Maharashtra v. Ramdas Shrinivas Nayak AIR 1982 SC 1249, Lallan Rai v. State of Bihar (2003) 1 SCC 268 and State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600.

160. In Slaney's case (supra) Vivian Bose, J. speaking for the Court observed:

> "5...What it narrows down to is this. Is the charge to be regarded as a ritualistic formula so sacred and fundamental that a total absence of one, or any departure in it from the strict and technical requirements of the Code, is so vital as to cut at the root of the trial and vitiate it from the start, or is it one of many regulations designed to ensure a fair and proper trial so that substantial, as opposed to purely technical, compliance with the spirit and requirements of the Code in this behalf is enough to cure departures from the strict letter of the law ?
>
> 6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and

> well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based..."

161. To the same effect are the subsequent decisions of this Court to which we have referred to above. Applying the test laid down in the said cases we have no hesitation in holding that there was nothing fundamentally wrong with the charges framed against the appellants nor have the appellants been able to demonstrate that they suffered any prejudice on account of the alleged defects. The High Court has in our opinion taken a correct view on the question urged before which does not call for any interference.

162. It was also contended by Mr. Jethmalani that all such incriminating circumstances as have been used against the appellants were not put to the accused. The High Court has while dealing with a similar contention urged before it carefully examined the case of each appellant and found no merit in them. That apart we have been taken through the statements made by the accused under Section 313 Cr.P.C. and find that the same have comprehensively put the circumstances appearing against the appellants to them and thereby given them an opportunity to explain the same. Besides, so long as there is no prejudice demonstrated by the appellants on account of any deficiency in the statements, there is no question of this Court interfering with the concurrent judgments and orders of the Courts below.

163. We may at this stage simply refer to the decision of this Court in Jai Dev v. State of Punjab AIR 1963 SC 612, where P.B. Gajendragadkar, J. (as His Lordship then was) speaking for a three-Judge Bench explained the purpose underlying the statement under Section 342 (now Section 313 Cr.P.C.) in the following words:

> "The ultimate test in determining whether or not the accused has been fairly 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."

164. We may also refer to the decision of this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793, where this Court declared that an omission in the statement under Section 313 does not ipso facto vitiate the proceedings and that prejudice occasioned by such defect must be established by the accused. The following passage is in this regard apposite:

> "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. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342 Cr.P.C. the omission has not been shown to have been caused prejudice to the accused."

165. To the same effect is the decision of this Court in State (Delhi Admn.) v. Dharampal (2001) 10 SCC 372 and Bakhshish Singh v. State of Punjab AIR 1967 SC 752.

166. Suffice it to say that the circumstances appearing against the accused persons have been elaborately put to them under Section 313 Cr.P.C. The contention that the appellants suffered any prejudice on account of a given circumstance not having put to them has, in our opinion, no merit and is accordingly rejected.

166. In the light of the above discussion, we see no reason to interfere with the judgments and orders of the Courts below in so far as the same have convicted appellant-Ansal brothers for offences under Sections 304A, 337, 338 read with Section 36 IPC and Section 14 of the Cinematograph Act, 1952.

167. As regards the conviction of Divisional Fire Officer, H. S. Panwar (A15) assailed in Criminal Appeal No.599/2010, the trial Court has on a reappraisal of the evidence adduced at the trial found that the said accused had acted in a grossly rash and negligent manner in issuing No Objection Certificates without carrying out a proper inspection of the cinema hall from the fire safety angle, resulting in issue of temporary permits in favour of the theatre which directly resulted in the death of 59 persons in the incident in question. The trial Court observed:

> "Accused H.S. Panwar acted with gross negligence by recommending 'No Objection certificate' without fulfilling requirements of law and without carrying out inspection of the cinema hall building from fire safety point of view, resulting in the issuance of temporary permits and on the basis of the same exhibition of films, which action resulted into the death of the patrons inside the cinema hall on the day of the

> incident. The accused committed breach of duty by omitting to point out the fire hazards and deficiencies in fire fighting measures in the cinema building, which act amounts to culpable negligence on his part. The act of accused can also be described as 'culpable rashness' since being an officer from the office of Chief Fire Officer, he was conscious that the intended consequences would surely ensure. The accused by, omitting to do his lawful duties committed gross negligence and rashness which was the direct and proximate cause of the death of 59 persons. Accordingly, the accused H.S. Panwar is held guilty for the offence under Section 304A IPC read with section 36 IPC. The accused is also held guilty for the injury to the patrons in the cinema hall for the offence under section 337 and 338 IPC." (emphasis supplied)

168. The above finding was affirmed by the High Court in the following words with a reduction in his sentence:

> "... Concerning accused H.S. Panwar, the negligent and careless inspection carried out by him has been held to be a significant and direct cause of the accident, which took away lives of innocent people, and grievously injured several others. His vigil could have prevented the fire clearance certificate. If he had displayed the same zeal that he did in November, 1996, when the inspection report did not yield a no objection? (sic) There would have been a greater scrutiny of the fire safety norms. Instead, he certified that fire safety norms had been complied with, whereas in actuality they were not. No doubt, he has served the Delhi Fire Service for a long time; according to the trial court judgment, he was 68 years when the impugned judgment was pronounced. He is also a recipient of commendations. On a conspectus of all these circumstances, the court is of the opinion that ends of justice would be served if the sentence is reduced to rigorous imprisonment for one year and Rs.5000/- under section 304-A. The default sentence in his case is also modified to simple imprisonment for two months. The conviction by the trial court is therefore maintained and to the above extent...."

169. Mr. Mehrotra, learned counsel for the appellant H.S. Panwar made a two-fold submission in support of his appeal. Firstly he argued that according to the standard practice prevalent in the Fire Department the appellant H.S. Panwar then Divisional Fire Officer was required to give a report in terms of the proforma prescribed for the purpose. This was according to the learned counsel evident from the deposition of Shri G.D. Verma (PW 37) the then Chief Fire Officer. He urged that even earlier inspections had been made on the basis of the very same proforma, which was correctly filled up by the appellant furnishing the requisite information demanded in the proforma.

170. Secondly it was contended by Mr. Mehrotra that the Victims' Association had claimed compensation from the management of the theatre as well as MCD Delhi Fire Service, in which case the High Court had exonerated Delhi Fire Service. That finding had attained finality as the same was not challenged by the Association. This, argued the learned counsel, implied that the Fire Service or its officers were not at fault for the occurrence in question, a circumstance which could and ought to be kept in view.

171. There is, in our opinion, no merit in either one of the submissions made by Mr. Mehrotra. Clearance by the Fire Department was, it is common ground, an essential pre-requisite for the grant of a license, its renewal or the issue of a temporary permit for exhibition of the films in any cinema hall. This clearance could be granted only if the officers concerned were fully satisfied after an inspection of the cinema premises that the same was indeed safe for use as a place for exhibition of cinematographs. Anyone discharging that important function had to be extremely vigilant as, any neglect on his part could allow an unsafe premises being used resulting in serious consequences as in the present case. Far from being vigilant and careful about the inspection, H.S. Panwar grossly neglected the duty cast upon him, resulting in the issue of temporary permits, which contributed to the causa causans of the incident. It is in the circumstances no defence for the appellant-H.S. Panwar to plead that he was asked to report only according to the proforma furnished to him. As a senior and experienced officer in the Fire Service Department, he ought to have known the purpose of his inspection and the care he was required to take in the interest of the safety of hundreds, if not thousands of cine- goers who throng to such public places for entertainment. In as much as he failed to do so, and issued a certificate which compromised the safety requirements and endangered human lives resulting directly in the loss of a large number of them, he has been rightly found guilty.

172. So also the second limb of Mr. Mehrotra's submission is in our opinion without any substance. The question whether the appellant H.S. Panwar was grossly negligent resulting in the loss of valuable human lives has to be determined on the basis of the evidence on record in the present case and not on the basis of findings which the High Court may have held in a summary proceedings for payment of compensation to the victims and their families recorded under Article 226 of the constitution. The evidence in the case at hand has been appraised by the two Courts below and found to establish the charge of negligence against the appellant. There is, in our opinion, no compelling reason for us to take a different view in the matter especially when we do not see any miscarriage of justice or perversity in the reasoning adopted by the trial Court and the High Court.

173. It brings us to Criminal Appeals No.617-627 of 2010 and 604 of 2010 filed by B.M. Satija (A-9) and Bir Singh (A-11) respectively. They were together with A.K. Gera (A-10) charged with commission of offences punishable under Sections 304 read with Section 36 of the IPC. The trial Court, as already noticed in the earlier part of this judgment, held all the three accused persons mentioned above guilty of the offence with which they were charged and sentenced them to undergo rigorous imprisonment for a period of seven years besides a fine of Rs.5000/- and six months imprisonment in default. In criminal appeals filed by the three accused persons, the High Court has converted the conviction from Section 304 Part II to Sections 304A, 337 and 338 read with Section 36 of the IPC in so far as B.M. Satija (A-9) and Bir Singh (A-11) are concerned, while acquitting A.K. Gera (A-10) of the charge. The High Court has further reduced the sentence awarded to the appellants B.M. Satija (A-9) and Bir Singh (A-11) from seven years rigorous imprisonment to two years and a fine of Rs.2000/- each for the offence under Section 304-A, rigorous imprisonment for six months with fine of Rs.500/- for the offence under Section 337, IPC and rigorous imprisonment for one year, with fine of Rs.1000/- for the offence under Section 338, IPC. While appellants B.M. Satija (A-9) and Bir Singh (A-11) have assailed their conviction and sentence before us, the CBI has challenged the acquittal of A.K. Gera (A-10) in Criminal Appeals No.605-616 of 2010.

174. Appearing for appellant-B.M. Satija, Mr. V.V. Giri, learned senior counsel argued that the appellant was not one of those deputed to attend to the complaint about the malfunctioning of the DVB transformer on the morning of 13th June, 1997. He submitted that evidence adduced by the prosecution regarding his presence and association with the process of rectification was sketchy and did not prove beyond a reasonable doubt his presence on the spot. He made an attempt to persuade us to reverse the concurrent findings of fact recorded by two Courts below in this regard and drew our attention to the depositions of P.C. Bhardwaj (PW-40), V.K Gupta (PW-43) and Bhagwandeen (PW-44) as also the documents marked Ex. PW-40/C, 40/A and 40/P. He urged that the CFSL report recording the signatures sent for examination did not lend any support to the prosecution case.

175. Mr. Gopal Singh, Senior Counsel appearing for A.K. Gera (A-9) respondent in CBI's Criminal Appeal No.605-616 of 2010 contended that the order passed by the High Court was based on appreciation of the evidence adduced by the trial Court and that interference with any such order of acquittal is rare unless it is found to be patently perverse. He urged that his client A.K. Gera (A-9) was not posted in the concerned zone in which the DVB transformer was installed. He had nothing to do with this act. The trial Court and the High Court have both concurrently held that the repairs of the DVB transformer were carried out by Bir Singh (A-11) and B.M. Satija A(-9). That finding is without any perversity. The High Court has relying upon the depositions of P.C. Bhardwaj (PW-40) and Bhagwandeen (PW-44) observed:

> "14.12 So far as role of the accused B.M. Satija and Bir Singh are concerned, PW-40 P.C. Bhardwaj deposed having informed B.M. Satija about the morning complaint. PW-44 deposed that all 3, i.e., Gera, Satija and Bir Singh were instrumental in repairing of the DVB transformer at Uphaar in the morning of 13.6.1997. Expert evidence in the form of PW-35/A; Ex.PW36/A all established that the cause of fire was improper crimping of the cable end with the socket which ultimately detached at the crucial time, resulted in intense sparking, settling down of the cable on the transformer which resulted in a slit; transformer oil gushed out, caught fire and spread to the parking area resulting in the improperly parked vehicles catching fire.
>
> 14.13 xxxxx 14.14 The depositions of other witnesses assume importance. PW- 40 clearly mentioned that he had discussed the complaint with Satija and chalked out the programme. PW/44 clearly deposed having accompanied Satija, Bir Singh and Gera to the relevant site at Uphar and witnessing the repairs with the aid of dye and hammer. At one place, he mentioned that Bir Singh carried out the repair under the supervision of both the officers, in another place of his deposition, he mentioned that Bir Singh's work was supervised by Satija."

176. The above findings do not in our view suffer from any perversity or any miscarriage of justice or call for interference under appeal in this connection under Article 136 of the Constitution of India. Even in regard to A.K. Gera (A-9), the High Court has held that he was present on the spot but in the absence of any further evidence to prove the role played by him, the High Court considered it unsafe to convict him for imprisonment:

> "On an overall conspectus of the above facts, this Court is of opinion that though Gera's presence at site stands established, in the absence of fuller evidence about the role played by him, there can be no presumption that he played any part in the defective repairs, carried out without the aid of the crimping machine on the Uphaar DVB transformer. Mere presence when that cannot lead to presumption of involvement of an actor who is not expected to play any role and is insufficient, in the opinion of the Court, to saddle criminal liability of the kind envisioned under Section 304-A. To establish that Gera had a duty to care to ensure that notwithstanding the defective crimping carried out by the employees competent to do so and that he had an overriding responsibility of objecting to the work done by them, without proving whether he was there during the entire operation and if so how the extent of his involvement, the conviction for causing death due to criminal negligence cannot be arrived at. Although, there are circumstances which point to Gera's presence, they may even amount to suspicion of the role played by him, yet such evidence proved are insufficient to prove the case against him beyond reasonable doubt. In the circumstances, neither can be he convicted under Section 304 Part-II, nor under Section 304-A read with 337/338 and 36 IPC."

177. In fairness to Mr. Salve, learned counsel appearing for the CBI, we must mention that he did not seriously assail the above reasoning given by the High Court. At any rate, the view taken by the High Court is a possible view. We see no compelling reason to interfere with that view in the facts and circumstances of the case. Having said that, the question remains whether the High Court was justified in convicting appellants Bir Singh (A-11) and B.M. Satija (A-9) for the offence of causing death by rashness and gross negligence, punishable under sections 304A of the IPC.

178. In our view, the causa causans for the death of 59 persons was their inability to quickly exit from the balcony area for reasons we have already indicated. That being so, even when the repairs carried out by Bir Singh (A-

11) and B.M. Satija (A-9) may have been found to be unsatisfactory for the reasons given by the trial Court and the High Court, which we have affirmed, the fire resulting from such poor repair was no more than causa sine qua non for the deaths and, therefore, did not constitute an offence punishable under Section 304A of the IPC. Besides, the negligence of the occupiers of the cinema having intervened between the negligence of these two officials of the DVB and the deaths that occurred in the incident, the causal connection between the deaths and act of shabby repair of the installation of the DVB transformer is not established directly.

179. The conviction of these two appellants under Section 304A cannot, therefore, be sustained. That would, however, not affect their conviction under Sections 337 and 338 read with Section 36 of the IPC which would remain unaffected and is hereby affirmed.

180. Question No.1 is accordingly answered on the above lines.

Re: Question No.II:

181. The charge framed against N.S. Chopra (A-6) and other Managers of Uphaar Cinema was one for commission of the offence punishable under Section 304 Part II read with Section 36 of the IPC. The allegation made against the Managers was that even when they were present on the premises at the time of the incident, they had failed to either warn the patrons or facilitate their escape. They instead fled the scene despite the knowledge that death was likely to be caused by their acts of omission and commission. The Trial Court had found the charge proved and convicted and sentenced N.S. Chopra to undergo imprisonment for a period of seven years besides a fine of Rs.5,000/- and imprisonment for six months in default of payment. The High Court reversed that view qua N.S. Chopra and also R.K. Sharma (A-5) (since deceased). The High Court acquitted them of the charges for reasons which it summed up in the following words:

> "10.11 Section 304, first part requires proof of intention to cause death or such bodily harm as would cause death; the second part requires proof that knowledge existed that such injury would result in death, or grievous injury likely to result in death. The crucial aspect in both cases, is the state of mind, i.e "intention" or "knowledge" of the consequence. Proof of such intention or knowledge has to be necessarily, of a high order; all other hypotheses of innocence of the accused, have to be ruled out. The prosecution here, glaringly has not proved when these two accused fled the cinema hall; there is no eyewitness testifying to their having been in the balcony when the smoke entered the hall, and having left it, which could have proved knowledge of the likely deaths and grievous bodily injuries. Thus, this court is of the opinion that proof of these appellants, i.e N.S. Chopra and R.K. Sharma, having committed the offence under Section 304, is not forthcoming. Their conviction under that provision cannot, therefore, be sustained." (emphasis supplied)

182. The High Court also examined whether N.S. Chopra and R.K. Sharma could be convicted under Section 304A IPC, and answered that question in the negative. The High Court was of the view that the prosecution had failed to establish that N.S. Chopra was present on the scene and also that the documentary evidence adduced at the trial proved that he had not reported for duty on the fateful day. The High Court observed:

> "10.13 As far as R. K. Sharma is concerned, the evidence establishes that he had reported for duty... N.S. Chopra, on the other hand, according to the documentary evidence (Ex. PW-108/DB- 1, found in Ex.PW97/C) had not reported for duty. In his statement under Section 313, he mentioned having reached the cinema hall at 5-30 PM, and not being allowed inside, since the fire was raging in the building.
>
> xx xx xx 10.17 The totality of the above circumstances no doubt points to complete managerial and supervisory failure in the cinema. Such inaction is certainly culpable, and points to grave lapses. This undoubtedly was an important and significant part of the causation chain. Yet, to convict the accused R.K. Sharma and N.C. Chopra, there should be more convincing proof of involvement. At best, there is evidence of suspicion of their involvement. Yet, no attempt to prove that they were present, and did not take any effective measures to evacuate the patrons, which they were bound

> to do, in the normal course of their duty, has been made. Mere proof that these accused were Assistant Manager, and Manager, as on the date of the accident, and that one of them had reported earlier, during the day, is not adequate to prove that they caused death by criminally negligent, or rash act. There was failure on the part of the trial court to notice that the two vital aspects, i.e duty and breach of that duty of such scale, as to amount to an offence. Their appeals are entitled to succeed. These appellants have to, therefore, be acquitted of the charges. Their conviction is consequently set aside." (emphasis supplied)

183. In fairness to Mr. Salve and Mr. Tulsi, we must say that no serious attempt was made by them to demolish the reasoning adopted by the High Court in coming to its conclusion. That apart, the view taken by the High Court on a fair appreciation of the evidence, both oral and documentary, does not even otherwise call for any interference by us as the same is a reasonably possible view.

184. Coming then to the acquittal of S.S. Sharma (A-13) and N.D. Tiwari (A-

14), Administrative Officers, MCD, the charges framed against the said two accused persons were for offences punishable under Section 304A, 337 and 338 read with Section 36 IPC. The allegation levelled against them was that they negligently issued No Objection certificates to Uphaar Cinema in the years 1995-96 and 1996-97 without so much as conducting inspections of the premises, and thereby committed a breach of the Cinematograph Act and the Rules made thereunder. The Trial Court found that charge established and accordingly convicted and sentenced both the accused persons to undergo imprisonment for a period of two years and a fine of Rs.5,000/- for the offence punishable under Section 304A, six months for the offence punishable under Section 337 and two years under Section 338 of the Code. The High Court has in appeal reversed the conviction and the sentences awarded to the accused persons on the reasoning that it summed up in the following words:

> "13.6 The prosecution, in order to succeed in its charge of accused Mr. S.S. Sharma and Mr. N.D. Tiwari having acted with criminal negligence and caused death and serious injury, should have first established the duty of care either through some enacted law like DCR, 1953 or DCR, 1981 or a general duty discernable in their normal course of official functions. In addition, the prosecution should have established breach of such duty would have resulted in a foreseeable damage and death to or in grievous injury to several persons. Unlike in the case of the Fire Department, the Licensing Department or the Electrical Inspectorate, all of whom are named authorities empowered to inspect the premises, there is no role assigned to Administrative Officers of the MCD. The rationale for obtaining 'no objections' from these officers has been left unexplained. The prosecution has failed to establish the necessity for such No Objection Certificate and how without such document, by the Administrative Officers of MCD, the licensing authority, DCP (Licensing) would not have issued the temporary permit. Ex. 22/A, the letter by the licensing department is in fact addressed to the Building department, MCD.

> xx xx xx 13.8 The materials on record nowhere disclose how, even if it were assumed that Mr. S.S. Sharma and Mr. N.D. Tiwari breached their duties of care, the breach was of such magnitude as would have inevitably led to death or grievous injury to several persons and that such consequence was reasonably foreseeable by them when they issued No Objection Certificates. No doubt, the issuance of No Objection Certificates and handing them over to the beneficiary directly was a careless, even callous act. It was also used to be placed on the record as a prelude to the issuance of the permits. But in the absence of clearly discernable duty of care and the magnitude of foreseeable damage by these accused, this Court cannot affirm the findings of the Trial Court and their conviction.
>
> 13.9 The appeals of Mr. S.S. Sharma and Mr. N.D. Tiwari are, therefore, entitled to succeed." (emphasis supplied)

185. There was no serious argument advanced by either Mr. Salve, appearing for the CBI or Mr. Tulsi for assailing the correctness of the view taken by the High Court in appeal and rightly so because the High Court has, in our opinion, taken a fairly reasonable view which is in tune with the evidence on record. There is, in our opinion, no room for our interference even with this part of the order passed by the High Court by which it acquitted S.S. Sharma and N.D. Tiwari, Administrative Officers of the MCD. Our answer to Question No.II is in the affirmative.

Re: Question No.III:

186. The Trial Court had framed charges against the accused persons by an order dated 9th April, 2001 by which Sushil and Gopal Ansal were charged with commission of offence punishable under Section 304A, 337 and 338 read with Section 36 IPC. Against that order framing charges the Association of Victims of Uphaar Tragedy (AVUT) filed Criminal Revision No.270 of 2001 before the Delhi High Court to contend that a charge under Section 304 IPC also ought to have been framed against the said two accused persons. The case of the association was that there was overwhelming evidence on record to establish the charge. That revision eventually failed and was dismissed by the High Court by its order dated 11th September, 2001 (Sushil Ansal v. State Through CBI etc. etc. 1995 (2002) DLT 623). Revision petitions filed by other accused persons against the order of framing charges were also dismissed by the High Court by the very same order. Dealing with the contention urged on behalf of the AVUT the High Court observed:

> "34. The plea of Association of Victims of Uphaar Tragedy to frame charges under Section 304 IPC against accused Sh. Sushil Ansal and Sh. Gopal Ansal, in addition to the charges already framed against them, cannot be sustained in as much as prima facie a case of negligence only is made out against them. The allegations against them gross negligence, wanton carelessness and callous indifference in regard to the up-keep and maintenance of the cinema. Had rapid dispersal facilities been available to the patrons in the balcony, no death or injury could have taken place and as such, this Court is of the considered view that there are no good and sufficient grounds for slapping a charge under Section 304 IPC against these two accused."

187. What is significant is that AVUT did not bring up the matter to this Court against the above order passed by the High Court. On the contrary, Sushil Ansal appears to have filed a special leave petition in this Court challenging the dismissal of the revision petition by the High Court which was subsequently dismissed as withdrawn by this Court by order dated 12th April, 2002. The result was that the trial commenced against the Ansal brothers on the basis of the charges framed by the Trial Court.

188. The AVUT during the course of the trial made another attempt to have the charge under Section 304 IPC framed against the Ansal brothers by moving an application before the Trial Court to that effect. The Trial Court, however, disposed of that application stating that if it found sufficient evidence against the Ansal brothers justifying a charge under Section 304 IPC or any other person for that matter, it would take action suo moto for framing such a charge. Final judgment of the Trial Court was delivered on 20th November, 2007 in which it convicted Ansal brothers of the offence under Section 304A of the IPC, which clearly meant that the Trial Court had not found any reason to frame any additional charge against them under Section 304 IPC.

189. Aggrieved by the omission of the Trial Court to frame a charge under Section 304 IPC, AVUT filed a revision petition before the High Court which too was dismissed by the High Court with the observation that their earlier revision petition framing charges under Sections 304, 337 and 338 read with Section 36 having been dismissed by the High Court, the said order had become final, especially when the revisionist AVUT did not carry the matter further to this Court. The High Court also held that the appeal against the conviction of the Ansal brothers having been disposed of, there was no question of framing any charge for a graver offence in the absence of any evidence unequivocally establishing that such a charge was made out and yet had not been framed. The High Court held that procedure for misjoinder of charges under Section 216 applied during the stage of trial, whereas AVUT was asking for a remand of the matter for a retrial on the fresh charge under Section 304 Part II, which was not permissible under the scheme of the Code. The High Court also rejected the contention that Ansal brothers could be convicted for an offence graver than what they were charged with.

190. In the appeal filed by AVUT against the order passed by the High Court in the above revision petition, they have agitated the very same issue before us. Appearing for the Victims Association, Mr. Tulsi argued that the acts of omission and commission of Ansal brothers by which the egress of the patrons was obstructed warranted a conviction not merely for the offence punishable under Section 304A IPC but also for the offence punishable under Section 304 Part II since according to the learned counsel the said acts were committed with the knowledge that death was likely to result thereby. Mr. Tulsi in particular contended that the act of installing an eight-seater box that entirely blocked the right-side exit in the balcony was itself sufficient for the Court to order a retrial of the Ansal brothers, since they knew by such an act they were likely to cause death of the patrons in the event of a fire incident. On that premise, he contended that the matter should be remanded back to the Trial Court for retrial for commission of the offence punishable under Section 304 Part II. In support of the contention that the fact situation in the case at hand established a case under Section 304 Part II, Mr. Tulsi placed reliance on the decision of this Court in Alister Anthony Pereira v. State of Maharashtra (2012) 2 SCC 648 where this Court was dealing with an inebriated driver, driving

under the influence of alcohol causing the death of people on the footpath. He contended that this Court had in that fact situation held that by driving recklessly under the influence of alcohol the driver knew that he can thereby kill someone. Anyone causing death must be deemed to have had the knowledge that his act of omission and commission was likely to result in the loss of human lives.

191. Mr. Ram Jethmalani, learned counsel for Ansal brothers on the other hand placed reliance upon the decision of this Court in Keshub Mahindra v. State of M.P. (1996) 6 SCC 129 and argued that a case where a person in a drunken state of mind drives a vehicle recklessly is completely distinguishable from the case at hand and that the fact situations are not comparable in the least. On the contrary in the case of Keshub Mahindra (supra), this Court has clearly repelled the contention that the charge under Section 304 Part II would be maintained against those handling the plant from which the lethal MIC gas had leaked to cause what is known as the infamous Bhopal Gas Tragedy in which thousands of human beings lost their lives. If this Court did not find a case under Section 304 Part II made out in a case where the tragedy had left thousands dead, the question of the present unfortunate incident being treated as one under Section 304 Part II did not arise, contended Mr. Jethmalani.

192. In Alister Anthony Pereira's case (supra), the accused was driving in an inebriated condition when he ran over a number of labourers sleeping on the pavement, killing seven of them. The Trial Court convicted the accused under Sections 304A and 337 IPC but acquitted him under Section 304 Part II and 338 IPC. The Bombay High Court set aside the acquittal and convicted the accused for offences under Sections 304 Part II, 337 and 338 IPC. This Court affirmed the said judgment of the High Court and while doing so explained the distinction between the offence under Section 304A and that punishable under Section 304 Part II IPC. This Court observed:

> "47. Each case obviously has to be decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 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 Indian Penal Code 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 Indian Penal Code."

193. This Court went on to hold that the accused in the above case could be said to have had the knowledge that his act of reckless driving in an inebriated condition was likely to cause death. This Court observed:

> "41. Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs, may be held guilty not only of the act but also of the result. As a matter of law - in view of the provisions of the Indian Penal Code - 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 Indian Penal Code. Section 304A Indian Penal Code 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. xx xx xx
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> 78. We have also carefully considered the evidence let in by prosecution - the substance of which has been referred to above
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> - 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." (emphasis supplied)

194. In State through PS Lodhi Colony, New Delhi v. Sanjeev Nanda (2012) 8 SCC 450, six bystanders were killed when the accused, driving recklessly under the influence of alcohol ran them over. The accused was also shown to have gotten out of the vehicle after the incident, inspected the gruesome damage and thereafter driven away. While the trial Court convicted the accused under Section 304 Part II, IPC, the Delhi High Court altered the conviction to one under Section 304A on the ground that knowledge of causing death was not made out. This Court allowed the appeal against this decision and held the offence of culpable homicide not amounting to murder to have been made out. The reasoning behind the Court's conclusion that the accused had the knowledge that death was likely to be caused was based on the facts of the case and the presumption that was drawn in Alister Anthony (supra) against drunken drivers in hit and run cases. K.S.P. Radhakrishnan, J. speaking for this Court observed as follows:

> "The principle mentioned by this Court in Alister Anthony Pereira (supra) indicates that the person must be presumed to have had the knowledge that, his act of driving the vehicle without a licence in a high speed after consuming liquor beyond the permissible limit, is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road. In our view, Alister Anthony Pareira (supra) judgment calls for no reconsideration. Assuming that Shri Ram Jethmalani is right in contending that while he was driving the vehicle in a drunken state, he had no intention or knowledge that his action was likely to cause death of six human beings, in our view, at least, immediately after having hit so many human beings and the bodies scattered around, he had the knowledge that his action was likely to cause death of so many human beings, lying on the road unattended. To say, still he had no knowledge about his action is too childish which no reasonable man can accept as worthy of consideration. So far as this case is concerned, it has been brought out in evidence that the accused was in an inebriated state, after consuming excessive

> alcohol, he was driving the vehicle without licence, in a rash and negligent manner in a high speed which resulted in the death of six persons. The accused had sufficient knowledge that his action was likely to cause death and such an action would, in the facts and circumstances of this case fall under Section 304(II) of the Indian Penal Code and the trial court has rightly held so and the High Court has committed an error in converting the offence to Section 304A of the Indian Penal Code."

195. What emerges from the two cases referred to above is that:

> a. Each case must be decided on its own facts to determine whether such knowledge did in fact precede the rash/negligent act.
>
> b. What converts a case apparently falling under Section 304A into one under Section 304 Part II is the knowledge that the act is likely to cause death".

c. Where the act which causes death is the act of driving a vehicle in a rash and reckless manner and in an inebriated state after consuming liquor, the accused may be attributed the knowledge that such act was likely to cause death of others using the road.

196. The decision in Alister Anthony Pereira's case (supra) or that delivered in Sanjeev Nanda's case (supra) does not lay down any specific test for determining whether the accused had the knowledge that his act was likely to cause death. The decisions simply accept the proposition that drunken driving in an inebriated state, under the influence of alcohol would give rise to an inference that the person so driving had the knowledge that his act was likely to cause death. The fact situation in the case at hand is not comparable to a case of drunken driving in an inebriated state. The case at hand is more akin on facts to Keshub Mahindra's case (supra) where this Court was dealing with the question whether a case under Section 304 part II was made out against the management of Union Carbide India Ltd., whose negligence had resulted in highly toxic MIC gas escaping from the plant at Bhopal. The trial Court in that case had framed a charge against the management of the company for commission of an offence under Section 304 Part II, IPC, which was upheld by the High Court in revision. This Court, however, set aside the order framing the charge under Section 304 Part II and directed that charges be framed under Section 304A, IPC instead. This Court observed:

> "20...The entire material which the prosecution relied upon before the Trail Court for framing the charge and to which we have made a detailed reference earlier, in our view, cannot support such a charge unless it indicates prima facie that on that fateful night when the plant was run at Bhopal it was run by the concerned accused with the knowledge that such running of the plant was likely to cause deaths of human beings. It cannot be disputed that mere act of running a plant as per the permission granted by the authorities would not be a criminal act. Even assuming that it was a defective plant and it was dealing with a very toxic and hazardous substance like MIC the mere act of storing such a material by the accused in Tank No. 610 could not even prima facie suggest that the concerned accused thereby had knowledge that they were likely to cause death of human beings. In fairness to the prosecution it was not suggested

> and could not be suggested that the accused had an intention to kill any human being while operating the plant. Similarly on the aforesaid material placed on record it could not be even prima facie suggested by the prosecution that any of the accused had a knowledge that by operating the plant on that fateful night whereat such dangerous and highly volatile substance like MIC was stored they had the knowledge that by this very act itself they were likely to cause death of any human being. Consequently in our view taking entire material as aforesaid on its face value and assuming it to represent the correct factual position in connection with the operation of the plant at Bhopal on that fateful night it could not be said that the said material even prima facie called for framing of a charge against the concerned accused under Section 304 Part II, IPC on the specious plea that the said act of the accused amounted to culpable homicide only because the operation of the plant on that night ultimately resulted in deaths of a number of human beings and cattle..." (emphasis supplied)

197. At the same time, the Court held that there was enough evidence to prima facie establish that the accused management had committed an offence under Section 304A and observed that the evidence assembled by the prosecution suggested that structural and operational defects in the working of the plant was the direct and proximate cause of death:

> "21... It cannot be disputed that because of the operation of the defective plant at Bhopal on that fateful night a highly dangerous and volatile substance like MIC got converted into poisonous gas which snuffed off the lives of thousands of human beings and maimed other thousands and killed number of animals and that all happened, as seen at least prima facie by the material led by the prosecution on record, because of rash and negligent act on the part of the accused who were in-charge of the plant at Bhopal. Even though, therefore, these accused cannot be charged for offences under Section 304 Part II the material led against them by the prosecution at least prima facie showed that the accused were guilty of rash or negligent acts not amounting to culpable homicide and by that act caused death of large number of persons... In this connection we must observe that the material led by the prosecution to which we have made a detailed reference earlier prima facie shows that there were not only structural defects but even operational defects in the working of the plant on that fateful night which resulted into this grim tragedy. Consequently a prima facie case is made out for framing charges under Section 304A against the concerned accused..."

198. It is noteworthy that an attempt was made by the CBI and State of Madhya Pradesh to have the above order recalled and set aside by way of a curative petition which failed with the dismissal of the petition by a five- Judge Bench of this Court (See C.B.I. and Ors. etc. v. Keshub Mahindra etc. (2011) 6 SCC 216).

199. We may at this stage refer to Section 464 of the Code of Criminal Procedure which deals with the effect of the omission to frame or absence of, or error in the framing of charge and inter-alia

provides that 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. It is only if the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned that it may 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. The omission to frame a charge is, therefore, by itself not enough for the Court of appeal, confirmation or revision to direct the framing of the charge. What is essential for doing so is that the Court of appeal in revision or confirmation must record a finding to the effect that failure of justice has in fact been occasioned on account of the non-framing of charge.

200. The expression 'failure of justice' is not defined, no matter the expression is very often used in the realm of both civil and criminal jurisprudence. In Shamnsaheb M. Multtani v. State of Karnataka (2001) 2 SCC 577 this Court while dealing with that expression sounded a note of caution and described the expression as an etymological chameleon. That simile was borrowed from Lord Diplock's opinion in Town Investments Ltd. v. Department of the Environment 1977 (1) All E.R. 813. This Court held that the criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.

201. Mr. Tulsi, learned counsel for the victims' association was unable to satisfactorily demonstrate any failure of justice not only because there was no evidence strongly suggestive of the accused persons having had the knowledge that their acts of omission and commission were likely to cause death but also because failure of justice cannot be viewed in isolation and independent of the prejudice that the accused persons may suffer on account of inordinate delay in the completion of the trial or what may result from an indefinite procrastination of the matter by a remand to the trial Court. That speedy justice is a virtue recognised an integral and essential part of the fundamental right to life under Article 21 of the Constitution is well settled by a long line of decisions of this Court including the three- Judge Bench decision in Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, Patna (1980) 1 SCC 81 reiterated in A.R. Antulay v. R.S. Nayak (1992) 1 SCC 225. This Court in the latter case summed up the nature of the prejudice caused to an accused by a protracted trial in the following words:

> "3. The concerns underlying the Right to speedy trial from the point of view of the accused are:
>
> a) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
>
> b) The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

> c) Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise"

202. The Court undertook a comprehensive review of the earlier decisions in which a remand for a fresh trial was considered inappropriate and unfair to the accused persons having regard to the intervening delay. The following passage is in this regard apposite:

> "41. In Machander v. State of Hyderabad 1955 CriLJ 1644, this Court observed that while it is incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and accused persons are not indefinitely harassed. The scales, the court observed, must be held even between the prosecution and the accused. In the facts of that case, the court refused to order trial on account of the time already spent and other relevant circumstances of that case. In Veerbhadra v. Ramaswamy Naickar 1958 CriLJ 1565, this Court refused to send back proceedings on the ground that already a period of five years has elapsed and it would not be just and proper in the circumstances of the case to continue the proceedings after such a lapse of time. Similarly, in Chajju Ram v. Radhey Sham [1971] S.C.R. 172, the court refused to direct a re-trial after a period of 10 years having regard to the facts and circumstances of the case. In State of U.P. v. Kapil Deo Shukla 1972 CriLJ 1214, though the court found the acquittal of the accused unsustainable, it refused to order a remand or direct a trial after a lapse of 20 years. It is, thus, clear that even apart from Article 21 courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders."

203. In Machander's case referred to in the above passage, this Court had summed up the position as follows:

> "...We are not prepared to keep persons who are on trial for their lives under indefinite suspense because trial judges omit to do their duty. Justice is not one-sided. It has many facets and we have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that the guilty do not escape it is even more necessary to see that persons accused of crime are not indefinitely harassed. They must be given a fair and impartial trial and while every reasonable latitude must be given to those concerned with the detections of crime and entrusted with the administration of justice, limits must be placed on the lengths to which they may go.
>
> Except in clear cases of guilt, where the error is purely technical, the forces that are arrayed against the accused should no more be permitted in special appeal to repair the effects of their bungling than an accused should be permitted to repairs gaps in

> his defence which he could and ought to have made good in the lower courts. The scales of justice must be kept on an even balance whether for the accused or against him, whether in favour of the State or not; and one broad rule must apply in all cases..." (emphasis supplied)

204. So also in Ramaswamy Naickar's case relied upon by this Court in the above passage, a fresh inquiry into the complaint after five years was considered inappropriate. This Court observed:

> "...But the question still remains whether, even after expressing our strong disagreement with the interpretation of the Section by the courts below, this Court should direct a further inquiry into the complaint, which has stood dismissed for the last about 5 years. The action complained of against the accused persons, if true, was foolish, to put it mildly, but as the case has become stale, we do not direct further inquiry into this complaint. If there is a recurrence of such a foolish behaviour on the part of any Section of the community, we have no doubt that those charged with the duty of maintaining law and order, will apply the law in the sense in which we have interpreted the law. The appeal is therefore, dismissed..." (emphasis supplied)

205. To the same effect is the decision of this Court in Kantilal Chandulal Mehta v. The State of Maharashtra and Anr. (1969) 3 SCC 166 where this Court observed:

> "...In our view the Criminal Procedure Code gives ample power to the courts to alter or amend a charge whether by the trial court or by the appellate court provided that the accused has not face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him..."

206. The incident in the case at hand occurred about 16 years ago. To frame a charge for a new offence and remand the matter back for the accused to face a prolonged trial again does not appear to us to be a reasonable proposition. We say so independent of the finding that we have recorded that the fact situation the case at hand does not suggest that the accused Ansal brothers or any one of them, had the knowledge that their acts of omission or commission was likely to cause death of any human being. Question No.3 is accordingly answered in the negative. Re: Question No.IV:

207. We have, in the earlier part of this judgment, while dealing with Question No.I, examined the scope of criminal appeals by special leave and observed that this Court may interfere in such appeals only where wrong inferences of law have been drawn from facts proved before the Courts or where the conclusions drawn by the High Court are perverse and based on no evidence whatsoever. The scope of interference by this Court with the quantum of punishment awarded by the High Court is also similarly limited to cases where the sentence awarded is manifestly inadequate and where the Court considers such reduced punishment to be tantamount to failure of justice. This can be best illustrated by reference to cases in which this Court has interfered to either enhance the punishment awarded by the High Court or remitted the matter back to the High Court for a fresh order on the

subject.

208. In Sham Sunder v. Puran and Anr. (1990) 4 SCC 731, the High Court had converted a conviction for an offence under Section 302 to that under Section 304 Part I and reduced the sentence to the period already undergone (less than six months) where the accused had inflicted repeated blows with a sharp-edged weapon on the chest of the deceased, and later on vital parts like the head, back and shoulders after he fell to the ground in a sudden fight. This Court found the reduced sentence imposed by the High Court to be grossly inadequate and held that it amounted to a failure of justice. Enhancing the sentence to five years imprisonment, this Court observed:

> "3. It is true that the High Court is entitled to reappraise the evidence in the case. It is also true that under Article 136, the Supreme Court does not ordinarily reappraise the evidence for itself for determining whether or not the High Court has come to a correct conclusion on facts but where the High Court has completely missed the real point requiring determination and has also on erroneous grounds discredited the evidence...the Supreme Court would be justified in going into the evidence for the purpose of satisfying itself that grave injustice has not resulted in the case.
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> xx xx xx
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> 8. The High Court has reduced the sentence to the term of imprisonment already undergone while enhancing the fine. It is pointed out that the respondents have undergone only imprisonment for a short period of less than six months and, in a grave crime like this, the sentence awarded is rather inadequate...The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of opinion that to meet the ends of justice, the sentence has to be enhanced." (emphasis supplied)

209. In Deo Narain Mandal v. State of Uttar Pradesh (2004) 7 SCC 257, the trial Court had awarded a maximum sentence of two years rigorous imprisonment for an offence punishable under Section 365, IPC. The High Court reduced the sentence to the period undergone (forty days). A three- Judge Bench of this Court intervened on the ground that the sentence awarded was wholly disproportionate to the crime and substituted a sentence of six months rigorous imprisonment. The Court held as follows:

> "8. This brings us to the next question in regard to the reduction of sentence made by the High Court. In criminal cases awarding of sentence is not a mere formality. Where the statute has given the court a choice of sentence with maximum and minimum limit presented then an element of discretion is vested with the court. This discretion cannot be exercised arbitrarily or whimsically. It will have to be exercised taking into consideration the gravity of offence, the manner in which it is committed, the age, the sex of the accused, in other words the sentence to be awarded will have to be considered in the background of the fact of each case and the court while doing so should bear in mind the principle of proportionality. The sentence awarded should be

neither excessively harsh nor ridiculously low.

xx xx xx

10. The High Court in this case without even noticing the fact what is the actual sentence undergone by the appellant pursuant to his conviction awarded by the Trial Court proceeded to reduce the same to the period already undergone with an added sentences of fine as stated above. Of course, the High Court by the impugned order recorded that the facts and circumstances of the case as well as age, character and other antecedents of the appellant which made the court feel that the ends of justice would be met if the sentence is reduced and modified. This conclusion of the High Court for reducing the sentence in our considered view is wholly disproportionate to the offence of which the appellant is found guilty.

11...On facts and circumstances of this case, we must hold that sentence of 40 days for an offence punishable under Section 365/511 read with Section 149 is wholly inadequate and disproportionate.

12. For the reasons stated above, we are of the opinion that the judgment of the High Court, so far as it pertains to the reduction of sentence awarded by the Trial Court will have to be set aside." (emphasis supplied)

210. Similarly in State of U.P. v. Shri Kishan (2005) 10 SCC 420 this Court intervened when a sentence of seven years rigorous imprisonment awarded by the trial Court for an offence punishable under Section 304 Part II, IPC was reduced by the High Court to the period already undergone, without regard to the period actually served by the accused. This Court directed the High Court to re-hear the appeal on the question of sentence keeping in mind the principles on sentencing laid down by this Court in State of Madhya Pradesh v. Ghanshyam Singh (2003) 8 SCC 13 that the sentence must be proportionate to the offence committed and sentence ought not to be reduced merely on account of long pendency of the matter.

211. In State of M.P. v. Sangram and Ors. AIR 2006 SC 48 a three-Judge Bench of this Court remanded the matter to the High Court for fresh disposal without going into the merits of the case, when it found that the High Court had reduced a sentence for an offence under Section 307 IPC from seven years rigorous imprisonment to the period already undergone (ten months and five days) by a short and cryptic judgment:

"...Learned counsel for the appellant has submitted that the sentence imposed by the High Court is wholly inadequate looking to the nature of the offence. The High Court has not assigned any satisfactory reason for reducing the sentence to less than one year. That apart, the High Court has written a very short and cryptic judgment. To say the least, the appeal has been disposed of in a most unsatisfactory manner exhibiting complete non-application of mind. There is absolutely no consideration of the evidence adduced by the parties...Since the judgment of the High Court is not in

> accordance with law, we have no option but to set aside the same and to remit the matter back to the High Court for a fresh consideration of the appeal...”

212. It is manifest from the above that while exercising extra-ordinary jurisdiction under Article 136 of the Constitution this Court has not acted like an ordinary Appellate Court but has confined its interference only to such rarest of rare situations in which the sentence awarded is so incommensurate with the gravity of the offence that it amounts to failure of justice. As a matter of fact in Deo Narain Mandal's case (supra) while this Court found the sentence awarded to be wholly disproportionate to gravity of the offence, this Court considered imprisonment for a period of six months to be sufficient for an offence which is punishable by a maximum term of two years rigorous imprisonment. Award of sentence of one year rigorous imprisonment for an offence where maximum sentence prescribed extends to two years cannot, therefore, be said to be inadequate to call for interference by this Court under Article 136 of the Constitution.

213. Having said that we must notice certain additional and peculiar features of this case. First and foremost is the fact that Mr. Salve, learned counsel for CBI, did not, in the course of his submissions, urge that the sentence awarded by the High Court to Ansals was inadequate. This is in contrast to the grounds urged in the memo of appeal by the CBI where the inadequacy of sentence was also assailed. In the absence of any attempt leave alone a serious one by the State acting through CBI to question the correctness of the view taken by the High Court on the quantum of sentence we would consider the ground taken in the memo of appeal to have been abandoned at the Bar.

214. The second and an equally important consideration that would weigh with any Court is the question of prolonged trial that the accused have faced and the delay of more than sixteen years in the conclusion of the proceedings against them. We have in the earlier part of our order referred to the decision of a three-Judge Bench of this Court in Hussainara Khatoon case (supra) where this Court declared the right to speedy trial to be implicit in Article 21 of the Constitution. Such being the case delay has been often made a basis for the award of a reduced sentence, as for instance in Balaram Swain v. State of Orissa 1991 Supp (1) SCC 510 this Court reduced the sentence from one year rigorous imprisonment to the period undergone (less than six months) on the ground that there was a delay of twenty three years involving long mental agony and heavy expenditure for the accused. So also in M.O. Shamsudhin v. State of Kerala (1995) 3 SCC 351 sentence was reduced by this Court from two years rigorous imprisonment to the period undergone on the ground of delay of eight years. There is no reason why in the case at hand the delayed conclusion of the proceedings should not have been taken by the High Court as a ground for reduced sentence of one year.

215. The third circumstance which dissuades us from interfering with the sentence awarded by the High Court is the fact that the appellant-Ansals did not have any criminal background and are both senior citizens, whose company has already been adjudged liable to pay compensation to the victims besides punitive damages awarded against them. This Court has in MCD, Delhi v. AVUT (supra) arising out of a writ petition seeking compensation for the victims and their families awarded compensation @ Rs.10 lakhs in the case of death of those aged more than 20 years and 7.5 lakhs in the case of those aged 20 years and less besides compensation of Rs.1 lakh to those injured in the incident with interest @ 9% p.a. and punitive damages of Rs.25 lakhs. There is no dispute that the

amount awarded by the High Court has been deposited by the Ansal Theaters & Clubotels (P) Ltd. in the proportion in which the claim has been awarded. The award so made is in tune with the spirit of the view taken by this Court in Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770 where this Court noted a global paradigm shift away from retributive justice towards victimology or restitution in criminal law. There is no gainsaying that in the absence of the order passed by this Court in MCD, Delhi v. AVUT (supra), we may have ourselves determined the compensation payable to the victims and awarded the same against Ansal brothers. Any such exercise is rendered unnecessary by the said decision especially because a reading of sub-section (5) of Section 357 of the Cr.P.C. makes it manifest that compensation awarded by a Criminal Court under Section 357 cannot be more than the sum that may be payable or recovered as compensation in a subsequent civil suit. That provision was interpreted by this Court in Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. (2007) 6 SCC 528 to hold that the amount of compensation under Section 357 should ordinarily be less than the amount which can be granted by a civil Court upon appreciation of the evidence brought before it for losses that it may have reasonably suffered.

216. For all that we have stated above we do not see any merit in the contention of Mr. Tulsi that the punishment awarded to the Ansal brothers ought to be enhanced either because there is an allegation against them for tampering with the Court's record or because there is a complaint pending against them before the learned ACMM in which Ansal brothers and their so called henchmen are accused of having intimidated and threatened the President of the Victims' Association. There is no gainsaying that both these matters are pending adjudication by the competent criminal Court and any observation as to the truthfulness of the allegations made therein will not only be inappropriate but also prejudicial to one or the other party. So also the argument that the Ansal brothers having persistently lied about their association with the company does not, in our opinion, outweigh the considerations that we have indicated hereinabove while upholding the view taken by the High Court on the question of sentence. We need to remind ourselves that award of punishment in a case where guilt of the accused is proved, is as serious and important a matter as the forensic process of reasoning by which the presumption of innocence is rebutted and the accused pronounced guilty. Like the former the latter also needs to be guided by sound logic uninfluenced by any emotional or impulsive outburst or misplaced sympathy that more often than not manifests itself in the form of a sentence that is either much too heavy and oppressive or wholly incommensurate considering the gravity of the offence committed. Courts have to avoid such extremities in their approach especially where there is no legislative compulsion or statutory prescription in the form of a minimum sentence for an offence. The Courts do well to avoid the Shylockian heartlessness in demanding the proverbial pound of flesh. Justice tempered by mercy is what the Courts of law administer even to the most hardened criminals. A spine- chilling sentence may be the cry of those who have suffered the crime or its aftermath but Courts are duty bound to hold the scales of justice even by examining the adequacy of punishment in each case having regard to the peculiar facts in which the offence was committed and the demands of justice by retribution within permissible limits. Absence of a uniform sentencing policy may often make any such endeavour difficult but the Courts do, as they ought to, whatever is fair and reasonable the difficulties, besetting that exercise notwithstanding.

217. Question No.IV is accordingly answered in the negative.

Re: Question No.V:

218. Adherence to safety standards in cinema theatres and multiplexes in India is the key to the prevention of tragedies like the one in the instant case. The misfortune, however, is that those concerned with the enforcement of such standards often turn a blind eye to the violations, in the process endangering the lives of those who frequent such places. While the case at hand may be an eye-opener for such of them as are remiss in their duty towards the public visiting cinema theatres and multiplexes, the authorities concerned cannot afford to let their guard down. As seen in the earlier part of this order, there are both civil and criminal liabilities that arise out of any such neglect. Those who commit violations of the same are accountable before law and may eventually come to grief should an incident occur resulting in injury or loss of human lives. We would have in the ordinary course issued directions to the authorities to take corrective steps, but for the fact that such directions have already been issued by a coordinate Bench while dealing with claims for payment of compensation made by the legal heirs of those who died and others who were injured in the incident. This Court has in the said decision observed:

> "45. While affirming the several suggestions by the High Court, we add the following suggestions to the government for consideration and implementation:
>
> (i) Every licensee (cinema theatre) shall be required to draw up an emergency evacuation plan and get it approved by the licensing authority.
>
> (ii) Every cinema theatre shall be required to screen a short documentary during every show showing the exits, emergency escape routes and instructions as to what to do and what not to do in the case of fire or other hazards.
>
> (iii) The staff/ushers in every cinema theatre should be trained in fire drills and evacuation procedures to provide support to the patrons in case of fire or other calamity.
>
> (iv) While the theatres are entitled to regulate the exit through doors other than the entry door, under no circumstances, the entry door (which can act as an emergency exit) in the event of fire or other emergency) should be bolted from outside. At the end of the show, the ushers may request the patrons to use the exit doors by placing a temporary barrier across the entry gate which should be easily movable.
>
> (v) There should be mandatory half yearly inspections of cinema theatres by a senior officer from the Delhi Fire Services, Electrical Inspectorate and the Licensing Authority to verify whether the electrical installations and safety measures are properly functioning and take action wherever necessary.
>
> (vi) As the cinema theatres have undergone a change in the last decade with more and more multiplexes coming up, separate rules should be made for Multiplex Cinemas whose requirements and concerns are different from stand-alone cinema

theatres.

(vii) An endeavour should be made to have a single point nodal agency/licensing authority consisting of experts in structural Engineering/building, fire prevention, electrical systems etc. The existing system of police granting licences should be abolished.

(viii) Each cinema theatre, whether it is a multiplex or stand- alone theatre should be given a fire safety rating by the Fire Services which can be in green (fully compliant), yellow (satisfactorily compliant), red (poor compliance). The rating should be prominently displayed in each theatre so that there is awareness among the patrons and the building owners.

(ix) The Delhi Disaster Management Authority, established by the Government of NCT of Delhi may expeditiously evolve standards to manage the disasters relating to cinema theatres and the guidelines in regard to ex gratia assistance. It should be directed to conduct mock drills in each cinema theatre at least once in a year."

219. We had in the light of the above passed an order in Criminal Appeal No.603 of 2010 directing the concerned to file a status report as to the steps taken pursuant to the above directions. We regret to say that nothing much appears to have happened since the issue of the directions extracted above. This would have called for monitoring of the steps which the authorities concerned were directed to take, but any such process would have further delayed the pronouncement of this order. We have, therefore, decided against that course. We all the same leave it open to the Victims' Association or any other public spirited person to seek implementation of the said directions in appropriate proceedings.

220. Question No. V is answered accordingly.

221. In the result :

i) Criminal Appeals No.597 of 2010 and 598 of 2010 filed by Sushil Ansal (A-1) and Gopal Ansal (A-2) respectively are hereby dismissed upholding the conviction and sentences awarded to them.

ii) Criminal Appeal No.599 of 2010 filed by Divisional Fire Officer, H.S. Panwar (A-15) is also dismissed upholding his conviction and sentence.

iii) Criminal Appeal No.617-627 of 2010 and No.604 of 2010 filed by D.V.B. Inspector B.M. Satija (A-9) and Senior Fitter Bir Singh (A-

11) are partly allowed to the extent that the conviction of the said two appellants is altered to Sections 337 and 338 read with Section 36 IPC without interference with the sentence awarded to them.

iv) Criminal Appeal No.605-616 of 2010 filed by CBI and Criminal Appeal No.600-602 of 2010 filed by the Association of Victims of Uphaar Tragedy are dismissed.

222. Appellants Sushil Ansal (A-1), Gopal Ansal (A-2) and H.S. Panwar (A-

15) are on bail. They are granted three weeks time to surrender, failing which the Trial Court shall take appropriate steps for having them apprehended and committed to jail for undergoing the remainder of their sentences.

.....J.

(T.S. THAKUR) March 5, 2014 IN THE SUPREME COURT OF INDIA CRIMINAL APPELALTE JURISDICTION CRIMINAL APPEAL NOs. 605-616/2010 STATE THROUGH CBI .. Appellant Versus SUSHIL ANSAL & ORS. ETC. ..Respondents WITH CRIMINAL APPEAL NOs. 600-602/2010 ASSOCIATION OF VICTIMS OF UPHAAR TRAGEDY .Appellant Versus SUSHIL ANSAL & ANR. ..Respondents J U D G M E N T GYAN SUDHA MISRA, J.

1. Having had the benefit of the views and reasonings assigned in the judgment and order of Hon'ble Justice T.S. Thakur, I entirely agree and hence concur with the findings recorded therein which are based on an in depth analysis and meticulous scrutiny of evidence led by the prosecution as also the accused appellants therein. Hence, I approve of the conviction of the accused appellants under Sections 304A, 337, 338 read with Section 36 of the Indian Penal Code ('IPC' for short) and Section 14 of the Indian Cinematograph Act, 1952.

2. However, when it comes to determination and imposition of sentence on the appellants due to their gross criminal negligence, I find it difficult to be unmindful or ignore that this country and more particularly the capital city of Delhi was shocked and shaken to the core 16 years ago by the magnitude and disastrous incident which took place on 13.6.1997 in a cinema house now widely known as Uphaar Tragedy which had virtually turned the cinema house into a pitch dark gas chamber wherein the cinema viewers were initially trapped due to lack of sufficient space and light for exit from the cinema hall and finally 59 persons lost their lives due to asphyxiation in the catastrophe which is perhaps unparalleled in the history of the city of Delhi. This tragic incident happened due to grave lapse on the part of the appellants/respondents in the instant appeals preferred by the AVUT and the CBI, who have been held guilty of gross criminal negligence concurrently by the Trial Court and the High Court which are now being approved by us in these appeals.

3. The appellants Sushil Ansal and Gopal Ansal in Criminal Appeal No. 597 of 2010 and Criminal Appeal No.598 of 2010, therefore, had been charged and convicted for an offence under Section 304A, 337, 338 read with Section 36 I.P.C. and Section 14 of the Cinematograph Act, 1952 and sentenced to undergo imprisonment for two years by the trial court. Similarly, the appellants in Criminal Appeal No.599 of 2010 and Criminal Appeal No.617 to 627 of 2010 and Criminal Appeal No.604 of 2010 preferred by the Divisional Fire Officer H.S. Panwar and Officers of Delhi Vidyut Board (shortly referred to as 'DVB') were also convicted and sentenced to terms of imprisonment

specified in the impugned judgment and order of the High Court of Delhi. On appeal, however, the High Court although upheld the conviction of the appellants/respondents herein under the sections referred to hereinbefore, was pleased to reduce the sentence of two years into one year but the appellants/respondents herein have still preferred a batch of appeals in this Court challenging their conviction and sentence on several grounds.

4. Learned Justice T.S. Thakur in the accompanying judgment and order has already dealt with the matter in extensive detail and has recorded a finding upholding their conviction and sentence under Section 304A alongwith the other Sections. I fully endorse the same and hence uphold the conviction of the appellants under Section 304A, 337, 338 read with Section 36 of the IPC and Section 14 of the Cinematograph Act, 1952.

5. But with regard to the question of sentence, it may be noted that the trial court had convicted the appellants and sentenced them to imprisonment for two years which has been reduced by the High Court to one year only in spite of the fact that the High Court also upheld the findings of the trial court on the charge under Section 304A and other allied sections referred to hereinbefore. However, the High Court in spite of its finding highlighting the magnitude and gravity of the offence committed by the appellants has simply observed that the maximum sentence of two years under Section 304A is fit to be reduced to a period of one year only for which no specific reason much less cogent and convincing has been assigned as to why in the wake of the finding upholding the charge and conviction under Section 304A IPC, should not have upheld and maximum sentence of two years and whether the same was fit to be reduced to a period of one year only. But, before dealing with the question of quantum and sufficiency of punishment imposed on the appellant, I deem it appropriate to take into consideration the appeal filed by the appellant-Association for victims of Uphaar Tragedy (shortly referred to as 'the AVUT') bearing Criminal Appeal No.600-602/2010 filed by the AVUT in a representative capacity for the victims of Uphaar Tragedy as also the appeal filed by the C.B.I. bearing No.605 to 616 of 2010.

6. Learned Senior Counsel Mr. K.T.S. Tulsi in support of the appeal preferred by the AVUT had initially challenged the charge framed against the accused appellants under Section 304A and had contended that the charge was fit to be converted under Section 304 Part II IPC. On perusal of the findings, views and observations as also the reasons assigned therein by Hon'ble Thakur, J., I entirely agree that after more than 16 years of the incident, it would not be just and appropriate to remand the matter back to the trial court to consider converting the charge from Section 304A to 304 IPC so that the accused may face prolonged trial all over again as I am also equally of the view that it would not be reasonable or a just proposition and the correct course of action to adopt. However, this does not deter me from accepting the contention of the counsel for the AVUT that even if this Court considers that at this length of time from the date of the incident ordering a fresh trail may not be in the larger public interest, it would not be a reason to refuse to consider whether accused-appellants deserved the maximum sentence permissible under Section 304A IPC in spite of the gravity of charge and conviction which we have upheld.

7. In order to consider this crucial aspect of the matter, it would be necessary to recollect and refer to the findings recorded by the trial court and the High Court approved by us which learned Thakur

J. has analyzed in great detail holding that the death of 59 innocent persons are directly relatable to the rash and negligent acts of omissions and commissions of the accused persons which were performed with such gross negligence and indifference which clearly amounts to culpable criminal negligence and failure to exercise reasonable and proper care in running the cinema shows in their theatre namely Uphaar and the failure of the accused-appellants to perform the imperative duties cast upon them by statutory rules, which were sufficient to establish culpable criminal rashness and it further establishes that they acted with consciousness and the requisite knowledge as to the consequence of their acts of omissions and commissions. Death of innocent persons is thus not only contributed by the actions of the accused-appellants but is directly relatable to the overt acts and conscious omissions performed by them. Hence, I fully agree with the views of learned Brother Justice Thakur that the degree of care expected from an occupier/owner of a place which is frequented everyday by hundreds if not thousands is very high in comparison to any other place that is less frequented or more sparingly used for public functions. It is also equally true and I agree that the higher the number of visitors to a place and greater the frequency of such visits, the degree of care required to be observed for their safety is higher. I, therefore, endorse the findings recorded by Thakur J., that judged in the above backdrop, it is evident that the occupiers/appellants in the present case had showed scant regard both for the letter of law as also the duty under the common law to care for the safety of their patrons. I also further agree with the view that the occupiers not only committed deviations from the sanctioned building plan that heightened the risk to the safety of the visitors but continued to operate the cinema in contemptuous disregard for the requirements of law and in the process exposed the cine goers to a high degree of risk to their lives which some of them eventually lost in the incident in question.

8. Far from taking any additional care towards the safety of the visitors to the cinema, the occupiers asked for permission to place additional seats that further compromised with the safety requirements and raised the level of risks to the patrons. There is much substance in the view taken that the history of litigation between the occupiers on the one hand and the government on the other regarding the removal of the additional seats permitted and their opposition to the concerns expressed by the authorities on account of increased fire hazards as also their insistence that the addition or continuance of the seats would not affect the safety requirements of the patrons/cine goers clearly showed that the owner of the cinema house were more concerned with making a little more profit out of the few additional seats that were added to the cinema in the balcony rather than maintaining the required standards of safety in discharge of the common law duty but also under the provisions of the Delhi Cinematograph Rules,1953 (for short 'DCR 1953').

9. It is no doubt true which was urged on behalf of accused- appellants that the incident in question which resulted in death of 59 persons in the fire that broke out was caused by the fire which started from the Delhi Vidyut Board Transformer which was poorly maintained and shabbily repaired by the Delhi Vidyut Board officials in the morning of 13th June, 1997. It was urged that the causa causans i.e. the cause of all causes for the loss of human lives thus was the transformer that caught fire because of the negligence of the DVB officials who did not even have a crimping machine to repair the transformer properly. The absence of oil soaking pit in the transformer room was also a reason for the oil to spill out from the transformer room to spread the fire to the parking area from where smoke containing lethal carbon monoxide rose, and due to chimney effect , entered the hall to

cause asphyxiation to those inside the balcony. It was, therefore, urged on behalf of the accused-appellants/cinema house owners that there was no evidence that any death had taken place inside the balcony which proved that most if not all the patrons sitting in the balcony had exited from that area but died on account of the poisonous effect of the gas enough to kill human being within minutes of exposure. Placing reliance on the ratio of the decision of this Court in the case of Kurban Hussein's case reported in 1965 (2) SCR 622, it was no doubt submitted that the causa causans in the case at hand was the fire in the DVB transformer and not the alleged deviations in the building plan or the sitting arrangements or the obstructions in the stair case that led out of the cinema precincts.

10. In fact, learned counsel representing the CBI Mr. Harish Salve and the counsel representing AVUT Mr. KTS Tulsi accepted the position that while there was no quarrel with the proposition that death must be shown to have occurred as a direct, immediate or proximate result of the act of rashness or negligence, it was not correct to say that the deaths in this case had occurred merely because of the fire in the transformer. In fact, failure of the victims to rapidly exit from the smoke filled atmosphere in the balcony area because of the obstructions and deviations proved at the trial was the real, direct and immediate cause for the death of the victims in the instant case who would have safely escaped the poisonous carbon monoxide gas only if there were proper gangways, exits, emergency lights and alarm system in working condition and human assistance available to those trapped inside the hall. I see no reason to differ or disagree with this finding so as to take a different view from what has been taken by Hon'ble Justice Thakur who has upheld the findings of the trial court and the High Court on these aspects.

11. Thus there appears to be two features in this context which need to be addressed and the first one is that the victims in the present case did not die of burn injuries but all of them died because of asphyxiation on account of prolonged exposure to poisonous gases that filled the cinema hall including the balcony area. Whatever may have been the source of fire as to whether it was caused by the DVB transformer or otherwise, the causa sine quo non was that there would have been no smoke possible without fire; the proximate cause was the smoke in the balcony area. Had there been no smoke in the balcony area, there would have been no casualties; that is not however the same thing as saying that it was the fire or the resultant smoke that was causa causans. In fact it was the inability of the victims to move out of the smoke filled area which was the direct cause of their death. Placed in a smoke filled atmosphere anyone would distinctively try to escape from it to save himself. Therefore, if such escapes were delayed or prevented, the causa causans for death was not the smoke but the factors that prevented or delayed the escape of cine goers from the smoke filled area which was the cinema house which got converted into a gas chamber.

12. I find sufficient substance and force and hence agree with the view taken by Hon'ble Justice Thakur that even if there had been adequate number of exits, gangways and all other safety measures in place but the exits had been locked preventing people from escaping, the cause of death in such event would be the act of preventing people from fleeing/exiting from the smoke filled hall which may be depending upon whether the act was deliberately intended to cause death or unintended due to negligence amounting to culpable homicide amounting to murder which was an act of gross negligence punishable under Section 304 A. An hypothetical case has rightly been relied

upon to infer that where instead of four exits required under the relevant rules, the owner of a cinema had provided only one exit, that would have prevented the patrons from moving out of the hall rapidly from the smoke filled atmosphere. Thus, the cause of all causes termed as 'causa causans' would be the negligent act of providing only one exit instead of four required for the purpose. In such an eventuality, it would make no difference whether the fire had started from a source within the cinema complex or outside or whether the occupiers of the cinema were responsible for the fire or someone else. Thus if failure to exit was the immediate cause of death which is the view taken by learned Justice Thakur and I agree, that the same would constitute the causa causans and hence I see no reason to deviate from the view taken as I find sufficient substance and force in the view that the smoke entered the cinema hall and the balcony but escape was prevented or at least delayed because of breach of the common law and statutory duty to care. Reference of the citations on this point relied upon by Justice Thakur in the accompanying judgment needs no further reiteration which has been amply discussed at great length therein.

13. The defence no doubt has relied upon the principle of benefit of penal immunity that if the person doing an act is acting under a mistake of fact and the person doing the act in good faith believes himself to be justified by law in doing it, then he would be entitled to protection under Section 52 of the IPC which states "that nothing is said to be done or believed in "good faith" which is done or believed without due care and attention" would incur penal consequences.

14. The use of expression "good faith" in this context necessarily brings in the question whether the person concerned had acted with due care and caution. If they had not, part (b) of Section 79 IPC would have no application to the case. In this context, it is difficult to overlook the evidence addressed by the prosecution/C.B.I. Thus the view taken by Justice Thakur that due care for the safety of the patrons was cast upon the two appellants Ansal Brothers fell upon them which they failed to comply as the evidence adduced at the trial and the concurrent findings recorded by the courts below have established the breach of the duty in several respects which include absence of any public address system to warn the viewers of the cinema inside the cinema hall in the event of any emergency which was a part of the duty to care which was grossly breached by the occupiers/appellants herein. This duty was a continuing obligation and had to be strictly discharged in respect of each cinema show conducted in the theatre. The grant of license or its renewal by the licensing authority did not in any manner relieve the occupiers of that obligation. Similarly, the requirement that the cinema house must have had emergency lights, fire extinguishers and that the occupiers must have provided help to the viewers in case of any emergency ensuring rapid dispersal from the enclosed area, were obligations which were implicit in the issuance and renewal of cinematograph license. Breach of all these obligations could not be justified on the ground that a license was granted or renewed in favour of the owners/licensee and no matter what, the duty to care towards the safety of the patrons was grossly neglected by the theatre owners/ the accused appellants. Failures in the event of mishap like the one at hand on account of the occupiers to discharge their legal obligations to take care for the safety of the patrons thus cannot be held to be immune from prosecution simply because a license to exhibit the films had been granted or renewed from time to time. The test of ordinary prudence applied to such proved attendant circumstances thus can help the court to determine whether an act or omission was in good faith or otherwise.

15. Thus, the finding recorded in the judgment by Thakur J., to the effect that the fundamental obligation and duty to care at all times rested with the occupiers of the cinema house and the licensee thereof is fit to be upheld. In discharge of the duty the appellants/owners are surely not entitled to argue that so long as there was a license in their favour, they would not be accountable for the loss of life or limb of anyone qua whom the occupiers/owners owed that duty. The duty to care for the safety of the cine goers even independent of the statutory additions made to the same , required the occupiers to take all such steps and measures which would have ensured quick dispersal from the cinema building of all the viewers inside the premises in the event of an emergency. But apart from that, a sitting plan which was in breach of the statutory provisions and compromised the safety requirement prescribed under the DCR 1953, could hardly support a belief in good faith that exhibition of films with such a plan was legally justified. That is so especially when the repeal of notification dated 30th September 1976 by which Uphaar was permitted 100 more seats was followed by a demand for removal of the additional seats. Instead of doing so the appellants/owners challenged that demand in a writ petition before the High Court of Delhi in which the High Court directed the authorities to have a fresh look from the standpoint of substantial compliance of the provisions of the Cinematograph Act. The High Court observed and directed the administration to apply their mind to the additional seats with a view to determine which of them have contravened which rules and to what extent. It was observed that compliance with the rule were to be substantial and not rigid and inflexible. If while carrying out the above directive, the authorities concerned turned a blind eye to the fundamentals of the rules by ignoring the closure of the right side exit and gangway prescribed as an essential requirement under DCR 1953, they acted in breach of the rules and in the process endangered the safety of the cinema viewers. The cinema owners had opposed the removal of the additional seats even when the respondent-authorities in the writ petition had expressed concerns about the safety of the patrons if the additional seats were not removed which removal would have by itself resulted in restoration of the right side gangway. However, the authorities also ought to have insisted on the restoration of the right side exit by removal of the eight seaters box which was allowed in the year 1978 ostensibly because with the right side gangway getting closed by additional seats occupying that space, the authorities considered the continuance of the right side exit to be of no practical use.

16. In the wake of the aforesaid concurrent findings, the question looms large as to why the High Court interfered with the quantum of punishment imposed by the trial court which had awarded a sentence of two years to the accused appellants but was reduced by the High Court to a period of one year without any reason as I cannot be unmindful of the legal position that the scope of interference on the question of sentence and with the quantum of punishment awarded by the High Court is undoubtedly limited to cases where the sentence imposed is manifestly inadequate and which the Court considers such reduced punishment tantamount to no punishment or illusory.

17. On a perusal of the ratios of cases referred to on this point specially in the matter of Sham Sunder vs. Puran and Anr. (1990) 4 SCC 731, it has been held that in a case where the sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice, this Court would be justified in interfering and enhancing the sentence and hence the period undergone awarded by the High Court was increased to a period of five years in a case under Section 304 Part I IPC considering the nature of offence committed by the accused as this Court has

unequivocally held that in criminal cases, awarding of sentence is not a mere formality and whenever this Court is of the view that the sentence awarded is wholly disproportionate to the crime, it would be justified in substituting it with a sentence of higher degree and quantum.

18. It has been held that where the statute has given the Court a choice of sentence with maximum and minimum limit presented, an element of discretion is surely vested with the court but this discretion cannot be exercised arbitrarily or whimsically. It will have to be exercised taking into consideration the gravity of offence, the manner in which it is committed, the age, the sex of the accused, in other words the sentence to be awarded will have to be considered in the background of the fact of each case and the Court while doing so should bear in mind the principle of proportionality that the sentence awarded should be neither excessively harsh nor ridiculously low. This was the view expressed by a three Judge Bench of this Court delivered in the matter of Deo Narain Mandal vs. State of U.P. (2004) 7 SCC 257, wherein the trial court had awarded a maximum sentence of two years R.I. for an offence punishable under Section 365 IPC but the High Court reduced the sentence to the period undergone (40 days). A bench of three Judges of this Court intervened in the matter on the ground that the sentence awarded was wholly disproportionate to the crime and hence substituted a sentence of six months R.I. Similarly, the ratio of the cases already referred to by Justice Thakur in his judgment viz. State of U.P. vs. Shri Kishan (2005) 10 SCC 420; State of M.P. vs. Ghanshaym Singh (2003) 8 SCC 13 and State of M.P. vs. Sangaram and Ors. AIR 2006 SC 48 unequivocally have laid down that where sentence is wholly inadequate, the same may be enhanced which has to be commensurate with the gravity of the offence so that it may not amount to failure of justice. In all these cases, when this Court found the sentence awarded by the High Court to be wholly disproportionate to the gravity of offence and considered imprisonment of a longer period which befitted the gravity of the offence committed by the accused, it enhanced the quantum of sentence.

19. It is most certainly true that the award of punishment to an accused in a case wherein the guilt of the accused is proved, is a serious and important matter and the same needs to be guided by sound logic uninfluenced by any emotional or impulsive outburst or misplaced sympathy that more often than not, manifest itself in the form of a sentence that is either much too heavy and oppressive or wholly in commensurate considering the gravity of the offence committed. Courts in any view have to avoid such extremities in their approach specially when there is no legislative compulsion or statutory prescription in the form of a minimum sentence for an offence committed.

20. Bearing the aforesaid parameters and the principles in mind and in the light of findings recorded concurrently and approved by us, I have not been able to convince myself or feel persuaded or find a valid reason why the High Court should have reduced the sentence of two years awarded by the trial court by reducing it to one year in the wake of the finding recorded by us also as we have held that all the accused owed a duty of care to the deceased persons since accused Sushil Ansal and A-2 Gopal Ansal were in actual control of the premises and took active participation in the day to day management of the theatre. They were the actual decision makers without whose approval no action could be undertaken in the premises. A-1 was the licensee of the cinema and had the obligation to run it with due and reasonable care. A-2 as the Managing Director of Ansal Properties & Industries Ltd had exercised complete control over the management of the theatre. They were the

actual beneficiaries of the establishment who were making out financial gains by charging the public. As persons in charge of a public entertainment centre which caters to the general public they owed a duty of care to maintain a safe environment. It would be indeed very far fetched to contend that a person who maintains a cinema hall and charges the public a fee for the facility, does not owe a duty of care to ensure that the public can enjoy the facility in a safe environment.

21. In the present case every rule in the book had been violated with impunity, whether it be the maintenance of the transformer, illegal user of the area around the transformer, closure of gangways and exit in the balcony. Not only that the transformer was not kept in a safe environment, the area around the transformer had been filled with combustible substances so as to aggravate the danger. The public announcement system, emergency lights etc which are the most basic requirements in the cinema hall were non functional. On top of that, the illegal closure of exit in the balcony ensured that patrons could not make a speedy exit. All these decision were taken by A-1 and A-2 who were in active control of the theatre and the premises. In such a scenario it can easily be said that not only were they negligent but the negligence was of such a high degree that no reasonable man would have undertaken such a course specially the ones who were dealing in the business of running a cinema theatre where the lives of public at large were involved day in and day out as visitors to the cinema show.

22. The death of the deceased in the tragedy occurred due to the trap created for them by A-1 and A-2 along with the other actors who helped them achieve that end. Had the layout of the balcony not been changed from the sanctioned plan to such an extent that access to the right hand exit was totally blocked, this tragedy would not have taken place. Due to the blockage of the right hand exit the patrons were forced to use both the left hand exits which opened on the smoke filled left hand stairs.

23. The conduct of A-1 and A-2/respondents in these appeals was thus in total disregard of all the safety rules meant to contain a tragedy of this kind coupled with the knowledge of the 1989 fire which had taken place earlier in the Uphaar theatre. The culpability of the accused thus clearly brings them within the four corners of Section 304 as it lies in the knowledge that such a tragedy was possible and in fact had taken place in 1989 in an identical manner. But rather than taking stock of the situation they chose to carry on in the same manner as before in reckless disregard to the consequence.

24. This shows that the appellants / respondents herein Sushil Ansal and Gopal Ansal had knowledge that the transformer located on the ground floor was dangerous to the paying patrons visiting the cinema. This incident clearly established that the owners/ directors / Licencee and management were aware of the fact that the transformers posed a potential danger of a major fire and of the hall and balcony getting smoked up ‘chimney effect’. Inaction on the part of A-1 and A-2 despite the pendency of case regarding suspension of their license continued although a major fire had broken out on 06.07.1989 at 11.40 P.M. in identical circumstances when both the transformers i.e. the transformer of the Cinema as well as the transformer of DESU burnt and smoke reached right up to the balcony, but no step was taken to rectify the situation. The Licence was neither revoked nor was the matter brought to the notice of Hon’ble High Court.

FAULTY REPAIR OF THE TRANSFORMER

25. Besides the above, it has further come out in evidence led by the CBI and referred to extensively, that the cable end socket of the B phase of LT supply, cable of the transformer had not been fixed properly by A-9 (B M Satija), A-10 (A.K. Gera) & A-11 (Bir Singh) of DESU. The same had been fixed by hammering and not by crimping machine or any other proper system as provided under BIS 1255, 1983. Thus the short circuit resulting in the fire could have been avoided had the cables been properly repaired. As per the Report of electrical Inspector NCT of Delhi Shri K.L. Grover (EX. PW 24/A), the cable and socket of "B" phase of LT supply cables had not been fixed properly as the same appeared to have been fixed by hammering and not by the crimping machine or any other proper system. In his deposition, he has further clarified that the LT PVC cable socket was not crimped as required under the provision of IS Code 1255 of 1983 r/w sub rule 2 of Rule 29 of Rule 1956. The HT circuits were not found provided with protection system. The OCB were acting like as manual isolator and not as OCB's as they could not have been tripped automatically in case of abnormal condition of supply. The 1000 KVA transformer was not having sufficient clearances as required under IS 1886/1967. No arrangement for draining out of transformer oil in case of damage/rapture to the transformer was found which is mandatory as per the provision of IS 1886/1967 & IS 10028/1981.

26. As is clear from the deposition of PW48 S K Bahl (Addl Chief Engineer DVB), the staff of the DVB were obliged to follow the BIS standard which provided crimping for fixing of loose cables. He deposed that the Crimping Machines are provided for the purpose of crimping the socket with LT leads of the transformer. This was only to secure that no loose connections are made which could give rise to high temperature resulting in burning of leads at times. ....It was obligatory for the staff of DVB to follow the Indian Standards & DVB Manual for both installation as well as maintenance of substation equipment.

27. Thus the evidence adduced by the appellant CBI and referred to in great detail in support of their appeal establishes that due to the faulty repair of the transformer the connection of the cable end socket of the B phase of LT supply remained loose which resulted in sparking. This coupled with 1000 KVA current which was passing through these bus bars led to excessive heating. This caused a cavity on the B phase and melting of the upper portion of cable end socket. Thus the cable and socket came out from the bolt portion and hit the radiator fin of the transformer. The live conductor of the cable (whose insulation had melted due to the heating) formed an opening in the radiator fin and the transformer oil gushed out and caught fire. Reports of KV Singh EE Electrical PWD (PW 35/A), Report of Electrical Inspector, NCT, Shri K.L. Grover (PW 24/A), Report of Dr. Rajinder Singh (CFSL) (PW 64/B)] have been referred to by the appellant CBI in their appeal. The above findings thus have rightly been affirmed by the Hon'ble High Court in the impugned judgment.

28. I have further taken note of the fact that the transformer room was not ventilated as per the prescribed BIS Rules. (Clauses 7.3.1.1, 7.3.1.2, 7.3.1.4, 7.9.3 of the BIS rules). In fact, the open space above the parapet behind the transformer room from where smoke could have easily gone outside the building was closed. Instead of the parapet as reflected in the sanctioned plan there was a full wall behind the transformer effectively trapping the fire and the smoke within the building. The

sanctioned plan showed a parapet behind the transformer room as per PW 15- Y/11 which is a low wall built along the edge of a roof or a floor not more than 3ft. in height" in the Building Byelaws 1959. So the height of the wall behind the transformer could not have been more than 3 feet according to the sanction plan. But as is clear from the various reports there was full fledged wall behind the transformer. The Report of MCD Engineers (Ex. PW2/A) also states that in the rear a pucca wall marked A-B in the existing stilt plan has been constructed in full height of building whereas this wall in stilt floor has been shown open upto a height of 12 ft in the sanctioned plan. This was a serious violation against the sanctioned building plan. The same was reiterated in Report of PWD Engineers (EX PW29/A) which states that outer wall behind HT/LT room was constructed up to the First Floor height instead of 3ft height. In addition PW2 R.N. Gupta (EE) MCD and PW 29 B. S.Randhawa (AE) PWD have also deposed that outer wall behind HT transformer and LT room was found constructed upto the first floor height instead of 3 feet height.

29. I have further noted that A9 to A11 conducted improper repair of the DVB Transformer in the morning of 13.6.97 without the help of crimping machine which resulted in loose fitting/connections causing sparking in between the B Phase of the transformer, causing a hole in the radiator fin resulting in leakage of transformer oil which caught fire on account of the rise in the temperature due to the sparking and the improper repairs of the transformer which is established from the Repair Report Ex PW 108/AA, EX PW 40/C: the entry of repair, PW 40 PC Bharadwaj AE DVB & PW 44 Bhagwandeen. The contention of B. M. Satija that he was not posted in substation zone 1601 is incorrect as is clear from Ex. PW 48 E which is a letter from S.K. Bahl Addl. Chief Engineer to SP CBI (PW 48) dated 30.07.97 in reply to query from SP CBI. In reply to query No. 3, he clearly stated that B.M. Satija was entrusted the work of Substation zone 1601 of Dist. R.K. Puram. Uphaar Cinema which substation fell under jurisdiction of zone 1601, Capital work order 19.5.1997 vide (Ex PW 43/DC).

CULPABILITY OF THE SUPERVISOR OR INSPECTOR

30. In the present case, A-9 to A-11 i.e. the Inspectors and the fitter of DVB were in charge of the maintenance of the transformer which is a hazardous object. As electricians they should have known that by its very nature a transformer of such high capacity stored inside a building required proper maintenance and any lapse on their part would endanger the life of all the occupant of the building and neighbourhood. The callous manner of repair by these accused resulted in the outbreak of fire which finally resulted in a mass tragedy. A-15 is the Divisional Officer with DFS. It was his duty to inspect the building for the fire hazards and ensure that it was a safe place for the public. The illegalities and the violations committed by the management of the Cinema would not have been possible without willful dereliction of duty by this accused.

31. Thus the very persons who had been deputed to keep the public safe connived with the management to turn a blind eye to the hazards created in the building. The conduct of this accused is nothing short of reckless which finally led to the death of 59 persons as the transformer in question i.e. D.V.B. Transformer did not have following safety measures at the time of inspection:

i) The L.T. Side cables from the bus bar did not have clamping system or any support to the cables.

ii) The earth cable of the transformer had been found temporarily fitted with the earth strip i.e. twisting of earth cable.

iii) There was no cable trench to conceal the cable.

iv) H.T. Panel Board of transformer did not have any relay system to trip the transformer in case of any fault.

v) The Buchholtz Relay system was not fitted on the transformer.

vi) Temperature meter was not found fitted on the transformer.

32. The physical examination of D.V.B. transformer reveals that the cables on bus bars on L.T. side did not have check nuts. Except one lower terminal of phase Y and neutral terminal. The check nut of neutral terminal was found in loose condition. The blue phase single cable at the top along with cable-end-socket (detached cable) fell down on radiator fin due to constant arching sparking at nut bolt portion on bus bar, decoiling effect of cable and weight of cable. All coupled together led to eating away of metal of cable and socket resulting in U shape cable socket end. The physical examination of D.V.B. transformer reveals that the cables on bus bars on L.T. Side did not have check nuts. Except one lower terminal of phase Y and neutral terminal. The check nut of neutral terminal was found in loose condition. The blue phase single cable at the top along with cable-end-socket (detached cable) fell down on radiator fin due to constant arching sparking at nut bolt portion on bus bar, decoling effect of cable and weight of cable. All coupled together led to eating away of metal of cable and socket resulting in U shape cable socket end.

33. In fact PW 48 S K Bahl (Addl. Chief Engineer DVB) deposed that as far as substation staff is concerned DVB has Asst. Electric Fitters/ Sr. Electric Fitter who actually carry out the maintenance depending upon the extent of damage caused to such equipment. The immediate officer for getting such work done is the Junior Engineer who has specific jurisdiction of the area as fixed by his officers. The Inspector/JE in their respective areas were responsible for 100% check of the substation.

34. It had come in the evidence that Crimping Machines are provided for the purpose of crimping the socket with LT leads of the transformer. This is only to secure that no loose connections are made which could give rise to high temperature resulting in burning of leads at times. One transformer of 1000 KVA capacity was existing in one of the transformer rooms at Uphaar complex which was catering to the supply of adjoining localities of Green Park, apart from meeting part of the load of Uphaar complex were some of the connections have been allowed. It is obligatory for the staff of DVB to fllow the Indian Standards & DVB Manual for both installation as well as maintenance of substation equipment.

35. PW 73 Y. P. Singh (Retd.) Member Technical DVB also deposed that his post was the highest post on technical side in DVB. He went to Uphaar cinema building on the day the fire incident took place and inspected the place and he deposed that as per the sanction order crimping machine was a

major factor. Crimping machine is never kept in sub station as a stock. It is issued to the person who has to carry on the repairs. It is incorrect that the effect of hammer & dye is the same as that of crimping machine. In a crimping machine the worker is in a position to put required force while crimping the socket, while in case of dye & hammer the force applied is always arbitrary. A.K. Gera A-10 Gera has contended that he was assigned Zone 1603 and Uphaar was under 1601 therefore he just accompanied Satija and Bir Singh to Uphaar and not responsible for the repair of the Transformer. In his deposition at PW40 has clarified that the complaint was attended to by whoever was available at the time of complaint and not limited to the persons assigned to that zone. Zones are demarcated for maintenance but for breakdown there is no bifurcation.

36. PW44 Bhagwan Deen Mazdor DESU deposed that on 13.6.97 he was working as Mazdoor in DESU at Sector 6 R.K. Puram DESU. On 13.6.97 and had accompanied B. M. Satija, Inspector A.K. Gera & Bir Singh Sr. Fitter and went to Uphaar cinema at about 10-10.30 AM. He had taken tool box along with him under the instruction all the three above mentioned officials. (The witness correctly identified all the accused in the court). Bir Singh opened the shutter of the transformer room where the DVB transformer was installed. The socket was changed with the help dye and hammer as crimping machine was out of order by all the three mentioned above i.e. Bir Singh, Satija & A.K. Gera. After changing the socket the lead with socket was connected Bus Bar. The entire repair work was finished within 45 minutes approximately. After replacing the socket and connecting to Bus Bar the switch was put on and thereafter electricity supply was restored.

37. In addition to the aforesaid evidence, A-15 H.S. Panwar-Delhi Fire Service was responsible for issuing NOC from the fire safety and means of escape point of view. Though no fire safety and means of escape was available as per the standard laid down, in the Uphaar Cinema on the date of inspection i.e. 12.5.97 & 15.5.97 still NOC was issued. On the basis of this NOC, Temporary License was issued by the Licensing Authority. (Ex 31/DB & Ex 31/DC).

38. As a consequence of the aforesaid findings based on the analysis of the evidence recorded hereinbefore, sentence of two years awarded by the trial court in my view was not fit to be interfered with by the High Court and for this reason the appeal preferred by the AVUT is fit to be allowed to the extent that although the charge under Section 304 A may not be allowed to be converted into 304 Part II by remanding the matter for re-trial after the passage of more than 16 years, yet the sentence may not be reduced which trivializes or minimises the gravity of offence to a farce whereby justice to the cause appears to be a mirage, mockery or a mere tokenism. In my considered opinion, the High Court has indulged in misplaced sympathy by reducing the sentence of two years awarded by the Trial Court to one year in spite of its finding upholding the charge of gross criminal negligence under Section 304A and other allied Sections which is grossly inadequate considering the nature and gravity of offence committed by the appellants as also the finding that I have recorded hereinabove due to which their conviction under Section 304 A, 337, 338 read with 36 IPC has been upheld by us. In our opinion, the extent of the sentence of two years was thus not fit to be interfered with.

39. Nevertheless, the fact remains that 16 years have elapsed in the process of conclusion of the trial and pendency of the appeal and the appellant No.1 Sushil Ansal is now aged more than 74 years and

even if the appellants are subjected to undergo the maximum sentence of two years, it can hardly be held to be sufficient so as to match with the magnitude and gravity of offence for giving rise to the catastrophe in which 59 persons lost their lives due to reckless and gross criminal act of negligence at the instance of the appellants. Therefore, in an offence of this nature which can be put some what on par with the well-known tragic incident commonly known as 'Bhopal Gas Leak Tragedy', compensation of high quantum along with sentence of imprisonment may meet the ends of justice which must be punitive, deterrent and exemplary in nature. However, in this context, I also find force in the view taken by the High Court of Bombay in the matter of State of Maharashtra vs. Chandra Prakash Neshavdev reported in 1991 Cr.L.J. 3187, wherein it observed that it is an essential necessity of public policy that accused who have committed crimes must be punished when facts are fresh in the public mind. If for whatever reasons, the judicial process had dragged on for an abnormal point of time and the accused at that stage is faced with an adverse verdict, it would not be in the interest of justice to impose at this point of time jail sentence on the accused however serious the facts of the case are. Moreover, the tragic incident in this matter was the consequence of a cumulative negligence at the instance of the licensee Sushil Ansal and its executing authority Gopal Ansal as also due to the fault in the transformer of the Delhi Vidyut Board (DVB) and negligence of their employees which was not repaired and maintained properly as discussed hereinbefore and the accused appellants did not make a cautious and realistic attempt or used their foresight to foresee such an incident as ultimately the aim of the appellants Sushil Ansal and Gopal Ansal in Criminal Appeal Nos.597 and 598 of 2010 was to make monetary gain by running the theatre.

40. Hence, I am of the view that the interest of justice to some extent would be served by imposing on the accused appellants a substantial fine and not merely a jail sentence. Thus, while the sentence of one year imposed by the High Court is upheld, the additional sentence of one year further while allowing the appeal of AVUT, is fit to be substituted by a substantial sum of fine to be shared equally by the appellants Sushil Ansal and Gopal Ansal alongwith the DVB which also cannot absolve itself from compensating the victims of Uphaar tragedy represented by the AVUT.

41. Thus, while I uphold the conviction and sentence of the appellant No.2 Gopal Ansal in Criminal Appeal No.598 of 2010 who was in fact conducting the business of running the Uphaar Theatre and had greater degree of responsibility to ensure safety of the cinema viewers, the appellant Sushil Ansal in Criminal Appeal No.597 of 2010 was primarily a licensee who was conducting the business and running Uphaar Theatre essentially through his brother A-2 Gopal Ansal. Hence, while the sentence of one year awarded in Criminal Appeal No.597 of 2010 to Sushil Ansal is fit to be upheld, the sentence already undergone by him may be treated as sufficient in the said appeal as he has already served major part of the sentence and in spite of dismissal of his appeal, he would at the most serve the balance three months sentence further along with remission.

42. But while allowing the appeal of AVUT and CBI, I take note of the fact that since Sushil Ansal is now more than 74 years old and was running the theatre business essentially along with his brother appellant No.2 Gopal Ansal, I consider that the period of enhanced sentence in these appeals imposed on the appellants Sushil Ansal and Gopal Ansal may be substituted with substantial amount of fine to be specified hereinafter and paid in the appeal bearing Nos.600-602 of 2010 preferred by AVUT and Criminal Appeal Nos.605-616 of 2010 preferred by the CBI which shall be

shared by the appellant Sushil Ansal and appellant Gopal Ansal in equal measure along with the Delhi Vidyut Board as I have upheld the sentence imposed on their employees too. My view stands fortified by the order passed in the case of Bhopal Gas Leak Tragedy where the punishment for criminal negligence was allowed to be substituted by substantial compensation which were paid to the victims or their legal representatives.

43. In view of the candid, comprehensive, unblemished findings recorded by the trial court, High Court and upheld by us after intensive and threadbear scrutiny of the evidence led by the prosecution as also the accused respondents in the Criminal Appeal Nos.600-602 of 2010 preferred by the AVUT and Criminal Appeal Nos.605-616 of 2010 preferred by the CBI, I am of the view that the appeals preferred by the AVUT and CBI are fit to be allowed and no leniency deserves to be shown while awarding maximum sentence prescribed under Section 304 A and other allied sections. Nonetheless one will also have to be pragmatic and cannot ignore that the enhancement of sentence of one year to two years to the accused cannot bring back those who suffered and lost their lives in the tragic and the horrific incident. Thus, while I am fully conscious and share the intensity of the agony and deep concern of the AVUT which has diligently prosecuted the appeal up to the highest Court, I am of the view that the ends of justice to some extent would be met by not merely awarding them sentence of imprisonment which I do by dismissing their appeals against the judgment and order of the High Court by which a sentence of one year has been awarded to all the accused, but also by enhancing their sentence but substituting it with substantial amount of fine to be used for the public cause in the memory of the Uphaar victims.

43. Hence, in so far as the Criminal Appeal No.600-602 of 2010 preferred by the AVUT/Victims Association and the prosecution represented by CBI bearing Criminal Appeal Nos.605-616 of 2010 are concerned, I deem it just and appropriate to allow both the appeals by enhancing their sentence upto the maximum period of two years prescribed under IPC for offence under Section 304A but in lieu of the additional period of sentence of one year, a substantial amount of fine to be specified hereinafter is directed to be paid by the appellants Sushil Ansal, Gopal Ansal and DVB in view of gross negligence on the part of their employees in order to compensate the charge of criminal negligence established against these accused persons. Hence, the enhanced period of sentence of one year shall be substituted by imposition of the amount of fine to be paid by them and I do so by placing reliance on the ratio of the order passed in the well known case of Bhopal Gas Leak Tragedy wherein the entire criminal case itself had been quashed by way of settlement against the accused and the sentence was substituted with heavy amount of fine which was paid to the victims by way of compensation. However, in this matter, the appellants have already stood the test of a long drawn trial wherein they have been convicted and sentenced which I have upheld and hence they shall undergo remaining period of sentence imposed under Section 304A along with the fine which we propose to impose in the appeals preferred by AVUT and CBI.

44. Therefore, for the reasons recorded hereinbefore, I am of the view that in lieu of the enhanced sentence of a period of one year which I allow in the appeals preferred by AVUT and CBI, the same be substituted with a fine of Rs.100 crores (One Hundred Crores) to be shared and paid by A-1 Sushil Ansal and A-2 Gopal Ansal in equal measure i.e. 50 crores each and 100 crores in all and shall be paid by way of a demand draft issued in the name of the Secretary General of the Supreme Court

of India which shall be kept in a fixed deposit in any nationalised Bank and shall be spent on the construction of a Trauma Centre to be built in the memory of Uphaar Victims at any suitable place at Dwarka in New Delhi as we are informed that Dwarka is an accident prone area but does not have any governmental infrastructure or public health care centre to treat accident victims. For this purpose, the State of Delhi as DVB which is/was an instrumentality of the State, shall allot at least five acres of land or more at any suitable location at Dwarka within a period of four months of this judgment and order on which a trauma centre for accident victims alongwith a super speciality department/ ward for burn injuries shall be constructed to be known as the 'Victims of Uphaar Memorial Trauma Centre' or any other name that may be suggested by the AVUT/Uphaar Victims Association. This trauma centre shall be treated as an extension centre of the Safdarjung Hospital, New Delhi which is close to Uphaar Theatre and was the accident site which is hard pressed for space and desperately needs expansion considering the enormous number of patients who go there for treatment. The trauma centre to be built at Dwarka shall be treated as an extension centre of the Safdarjung Hospital to be constructed by the respondent accused Sushil Ansal and respondent accused Gopal Ansal under the supervision of the Building Committee to be constituted which shall include Secretary General of the Supreme Court, Registrar Administration of the Supreme Court alongwith a representative of the AVUT nominated by the Association and the Hospital Superintendent, Safdarjung Hospital, New Delhi within a period of two years from the date of allotment of the plot of land by the State of Delhi which shall be run and administered by the authorities of the Safdarjung Hospital Administration as its extension centre for accident victims.

45. In case, the accused appellants/respondents herein Sushil Ansal and Gopal Ansal fails to deposit the fine as ordered, the land alongwith Uphaar Theatre which is the accident site and is still existing at Green Park and has been seized shall be put to public auction under the supervision of the Building Committee referred to hereinbefore and the proceeds thereof shall be spent for constructing the Trauma Centre. It will be open for the Building Committee and/or the AVUT in particular to seek such other or further direction from this Court as and when the necessity arises in regard to the construction operation and administration of the Trauma Centre. The appeals bearing Criminal Appeal Nos.600 to 602 of 2010 preferred by AVUT and the appeal preferred by the CBI bearing Criminal Appeal Nos.605 to 616 of 2010 thus stand allowed in terms of the aforesaid order and direction.

46. In so far as the other connected Criminal Appeals are concerned, I respectfully agree and affirm the judgment and order passed by Hon'ble Thakur, J. Thus, the appeals bearing Nos.597 and 598 of 2010 preferred by the appellants/respondents Sushil Ansal and Gopal Ansal are dismissed except that the sentence imposed on the appellant No.1 Sushil Ansal is reduced to the period already undergone considering his advanced age. The other appeals preferred by the officers of DVB bearing Nos.617 to 627 of 2010 and 604 of 2010 and the employee of Fire Service bearing Appeal Nos.599 of 2010 are also dismissed as already ordered by Hon'ble Thakur, J. with which I agree. Consequently, the appellants shall surrender to serve out the remaining part of their sentence and in view of the appeals of AVUT and CBI bearing Appeal Nos.600 to 602 of 2010 and 605 to 616 of 2010 having been allowed, who are the respondents Sushil Ansal and Gopal Ansal in the appeals preferred by AVUT and the CBI, shall deposit the amount of fine imposed hereinbefore expeditiously but not later than a period of three months from the date of receipt of a copy of this judgment and order.

.....J (Gyan Sudha Misra) New Delhi, March 05 , 2014 REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICITION CRIMINAL APPEAL NO.597 OF 2010 Sushil Ansal ...Appellant Versus State Through CBI ...Respondent (With Crl. Appeals No.598/2010, 599/2010, 600-602/2010, 604/2010, 605- 616/2010 and 617-627/2010) ORDER BY THE COURT In the light of separate opinions delivered by us in the above- mentioned matters, we pass the following order:

(1) Criminal Appeal No.617 of 2010 (wrongly numbered as Criminal Appeals No.617-627/2010) filed by B.M Satija, Inspector DVB and Criminal Appeal No.604 of 2010 filed by Bir Singh, Senior Fitter, DVB are partly allowed and their convictions altered to Sections 337 and 338 read with Section 36 of the IPC. The sentence awarded to them shall, however, remain unaltered.

(2) Criminal Appeals No.597, 598 and 599 of 2010 filed by Sushil Ansal, Gopal Ansal and Harsarup Panwar respectively in so far as the same assail/challenge the conviction of the appellants for offences punishable under Section 304A read with Section 36 of the IPC and Sections 337 and 338 read with Section 36 of the IPC shall stand dismissed and their conviction affirmed.

(3) Criminal Appeals No.607 to 612 and 614 to 616 of 2010 filed by the CBI challenging the orders of acquittal of the respondents in those appeals shall stand dismissed.

(4) Criminal Appeals No.597, 598 and 599 of 2010 filed by the appellants in those appeals and Criminal Appeals No.605, 606 and 613 of 2010 filed by the State and Criminal Appeals No.600-602 of 2010 filed by the Association of Victims of Uphaar Tragedy to the extent the said appeals involve the question of quantum of sentence to be awarded to the convicted appellants in the appeals mentioned above shall stand referred to a three-Judge Bench.

Registry to place the papers before Hon'ble the Chief Justice for constitution of an appropriate Bench.

.....J.

(T.S. THAKUR) .....J.

(GYAN SUDHA MISRA) New Delhi March 5, 2014