IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION NO. 606 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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TEJRAV UTTAMRAV RANIT
Versus
STATE OF GUJARAT

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Appearance:
MS ARTI SAVALIYA for MS. KRUTI M SHAH(2428) for the Applicant(s) No. 1
MR HK PATEL, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 14/02/2024

CAV JUDGMENT

1. Present revision application u/s 397 r/w section 401 of the Code of Criminal Procedure, 1973 is filed by the petitioner – accused being aggrieved with the judgment and order rendered in Criminal Appeal No. 63 of 2007 by the Ld. 3rd Addl. Sessions

Judge, Surat dated 22.11.2012 confirming the judgment and order of conviction & order of sentence passed by Ld. JMFC, Mandvi dated 21.7.2007 passed in Criminal Case No. 162/2005, whereby the petitioner - org. Accused was convicted for offences punishable u/s. 279, 337 & 304-A r/w 338 of the IPC and respectively sentence for (i) simple 'imprisonment of 06 months and fine of Rs. 500/- and further S.I. of 01 month in case of in default of payment of fine, (ii) simple imprisonment of 3 months with fine of Rs. 500/- and further S.I. of 01 month in case of default of payment of fine and (iii) simple imprisonment of one and half years with fine of Rs. 2000/- with further S.I. of 06 months in case of default of payment of amount of fine, under the said offences. The petitioner was also convicted for the offence puinishable u/s 184 of the MV Act and sentenced for simple imprisonment of 2 months with fine of Rs. 500/- and further S.I. of 01 month in case of default of payment of fine and simple imprisonment of 3 months with fine of Rs. 1000/- and further S.I. of 03 months in case of default of payment of fine as far as offence punishable u/s 185 of the MV Act. All the sentences are ordered to run concurrently.

2. The case of the prosecution was that the present accused was driver of SRP Group - 10 Roopnagar Valia and he along with his staff member, on the date of the incident went to Songadh Treasury office in a vehicle bearing No. GJ-16 G-393and at the time of returned from Songadh to Valia, on Ukai Mandvi road at about 5.30 hours the accused draw the said vehicle in rash and negligent manner and in a drunk condition and he lost the control over the vehicle and the vehicle was dashed with the tree

and one Raju Prasad Aahir sitting in the said vehicle died on the spot and one Joraram Bisnoy died during the treatment and other persons of the staff sitting the vehicle sustained injuries.

3. Charge was framed. The petitioner pleaded not guilty and claimed to be tried. Therefore, the case was returned for recording the prosecution evidence. In all, the prosecution has examined total 13 witnesses, as also produced the 11 number of documentary evidence. The learned trial Court having appreciated the said evidence recorded the finding as noted in the judgment culminated in conviction as stated supra followed by imposition of punishment as above, which has been unsuccessfully challenged before the first appellate Court and thus present revision is filed.

4. Learned Advocate for the petitioner while assailing the concurrent judgments of the courts below would submit that the the learned Courts below have not properly appreciated the evidence on record. The learned Courts below could have kept the distance between the rash and negligent driving. She would further submit that none of the eye witnesses stated that the petitioner was driving the vehicle recklessly and negligently with the knowledge that his driving would cause endanger to the human life. She would further submit that the learned Courts below have committed serious error in understanding the law as well as understanding the facts and to analyze the evidence. In that background, she would further submit that looking to the provisions of Section 279 and 304-A of the IPC, the prosecution is required to prove criminal rashness and negligence. The impugned judgment is a flaw to the very basic connotation of

rashness and negligence which is required to be proved to establish the offence under the Section 279 and 304-A of the IPC. She would further submit that no person would ride the vehicle knowing fully well that he will also get the injury in an accident and therefore question of intention would not come in a way, but the learned Courts below have not addressed this issue. She would further submit that principle of *res ipsa loquitor* may be vital to the civil proceedings for getting compensation under the tortuous liability, but same could not be applicable in a criminal liability. The criminal jurisprudence demands that prosecution should prove the charge against the accused beyond reasonable doubt. She would further submit that mere alleging accident itself would not sufficient to prove the offence u/s 279 and 304A of the IPC. She would further submit that according to the facts coming from the record, it was curvy road and vehicle turned or capsized, which is resulted into death of one person on the spot and another subsequently. However, that aspect if cannot be believed that accused was riding motor vehicle rashly and negligently as to meet the ingredients of sections 279 and 304A of the IPC.

5. Upon above submission, learned advocate Ms. Savaliya submits to allow this petition.

6. On the other hand, learned APP would submit that the revisional jurisdiction of the Court is very limited. This Court cannot intervene with the concurrent impugned orders until it is stand and proved that the learned Courts below have ignored the basic principles of law and its applicability to the facts of the case. He would further submit that the learned Courts below

have appreciated the evidence of the eye witnesses on record. These witnesses have in one line or other stated that the petitioner was riding the vehicle at top speed and it has caused the accident. He would further submit that since there are concurrent findings of facts arrived by the learned Courts below, the finding is germane and could not be disturbed.

7. Upon such submission, learned APP would therefore submit to dismiss the revision application.

8. I have heard the learned Advocates for the rival sides at length and have also examined the records and proceedings and also perused the concurrent findings of fact arrived at by the learned Courts below.

9. Undoubtedly, in motor accident, one person has lost his life on the spot and another subsequently. The accident is also undisputed, whereby vehicle dashed with the tree on the road side resulted into minor and major injuries to some of the occupants and death of one person on the spot and another subsequently. The petitioner has also received injuries.

10. In the present case, the prosecution has charged the accused with the offence u/s 279 and 304A of the IPC with allied offence. It was also alleged that the accused was riding the vehicle in a drunken state. In order to prove that the petitioner accused was in a drunken condition, the prosecution has examined PW 11 Dr. Chandrakant Chnaganlal and also produced Form A, B and C at Exh.16,18 and 19.

11. At this juncture, to be noted that the prosecution is required to prove the charge against the petitioner beyond reasonable doubt. Let refer section 279 and 304A of the IPC.

> *"279 Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*
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> *304A 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."*

12. The Legislature has used the word " in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person". It indicates that the prosecution, in addition to proving facts of the case, is also required to prove the degree of negligence and rashness and it should be amount to the criminal rashness or criminal negligence. That one must bear in mind in such circumstances rashness has to be of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences. The word "negligence" has not been defined in the IPC. Yet, it can be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations, which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not

do.

13. In Naresh Giri Vs. State of M.P., reported in (2008) 1 SCC (Cri.)324, the Hon'ble Apex Court held thus:-

> *"7. Section 304A IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. This provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304A.*
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> *8. Section 304A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence, a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.*
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> *9. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edition) Volume 34 paragraph 1 (para 3) as follows :*
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> *"Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances*

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

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

"Yet a man may bring about an event without having adverted to it at all, he may not have foreseen that his actions would have this consequence and it will come to him as a surprise. The event may be harmless or harmful, if harmful, the question rises whether there is legal liability for it. In tort, (at common law) this is decided by considering whether or not a reasonable man in the same circumstances would have realised the prospect of harm and would have stopped or changed his course so as to avoid it. If a reasonable man would not, then there is no liability and the harm must lie where it falls. But if the reasonable man would have avoided the harm then there is liability and the perpetrator of the harm is said to be guilty of negligence. The word 'negligence' denotes, and should be used only to denote, such blameworthy inadvertence, and the man who through his negligence has brought harm upon another is under a legal obligation to make reparation for it to the victim of the injury who may sue him in tort for damages. But it should now be recognized that at common law there is no criminal liability for harm thus caused by inadvertence. This has been laid down authoritatively for manslaughter again and again. There are only two states of mind which constitute mens rea and they are intention and recklessness. The difference between

recklessness and negligence is the difference between advertence and inadvertence they are opposed and it is a logical fallacy to suggest that recklessness is a degree of negligence. The common habit of lawyers to qualify the word "negligence" with some moral epithet such as 'wicked' 'gross' or 'culpable' has been most unfortunate since it has inevitably led to great confusion of thought and of principle. It is equally misleading to speak of criminal negligence since this is merely to use an expression in order to explain itself."

11. "Negligence", says the Restatement of the law of Torts published by the American Law Institute (1934) Vol. I. Section 28 "is conduct which falls below the standard established for the protection of others against unreasonable risk of harm". It is stated in Law of Torts by Fleming at page 124 (Australian Publication 1957) that this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. In Director of Public Prosecutions v. Camplin (1978) 2 All ER 168 it was observed by Lord Diplock that "the reasonable man" was comparatively late arrival in the laws of provocation. As the law of negligence emerged in the first half of the 19th century it became the anthropomorphic embodiment of the standard of care required by law. In order to objectify the law's abstractions like "care" "reasonableness" or "foreseeability" the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform.

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

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

deliberate act knowing that there is some risk of damage resulting from the act but nevertheless continues in the performance of that act.

14. In R. v. Caldwell (1981) 1 All ER 961, it was observed that :" Nevertheless, to decide whether someone has been 'reckless', whether harmful consequences of a particular kind will result from his act, as distinguished from his actually intending such harmful consequences to follow, does call for some consideration of how the mind of the ordinary prudent individual would have reacted to a similar situation. If there were nothing in the circumstances that ought to have drawn the attention of an ordinary prudent individual to the possibility of that kind of harmful consequence, the accused would not be described as 'reckless' in the natural meaning of that word for failing to address his mind to the possibility; nor, if the risk of the harmful consequences was so slight that the ordinary prudent individual on due consideration of the risk would not be deterred from treating it as negligible, could the accused be described as reckless in its ordinary sense, if, having considered the risk, he decided to ignore it. (In this connection the gravity of the possible harmful consequences would be an important factor. To endanger life must be one of the most grave). So, to this extent, even if one ascribes to 'reckless' only the restricted meaning adopted by the Court of Appeal in Stephenson and Briggs, of foreseeing that a particular kind of harm might happen and yet going on to take the risk of it, it involves a test that would be described in part as 'objective' in current legal jargon. Questions of criminal liability are seldom solved by simply asking whether the test is subjective or objective."

15. The decision of R. v Caldwell (supra) has been cited with approval in R v. Lawrence (1981) 1 All ER 974 and it was observed that : ".....Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting 'recklessly' if, before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognized that there was such risk, he nevertheless goes on to do it".

14A. Normally, as rightly observed by the High Court charges can be altered at any stage subsequent to the framing of charges. But the case at hand is one where prima facie

Section 302 IPC has no application."

14. In ***Mahadev Prasad Kaushik v State of U P. [(2009)2 SCC (C) 834]*** the Hon'ble Apex Court in regards to negligence has observed following:-

> "*Though the term "negligence" has not been defined in the Code, it may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do."*

15. What could be necessary to prove the negligence and what are the ingredients of offence have been succinctly mentioned in the judgment of the Hon'ble Apex Court in case of ***Syad Akbar v State of Karnataka [(1980)1 SCC 30]***.

> *"Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord Atkin in Andrews v Director of Public Prosecutions 1937 AC 576: (1937)2 All ER 552 (HL) 'simple lack of care such as will constitute civil liability, is not enough'; for liability under the criminal law a very high degree of negligence is required to be proved....."*

16. In order to prove the offence under Sections 279 and 304A of the IPC, the prosecution is required to prove that the person was negligently driving the motor vehicle with the knowledge of hazard that his driving would result into injury or death of a person.

17. In background of the above-stated provisions of law in the present case, if we go through the oral evidence on the record, the prosecution has examined PW 1 injured witness Jugabhai

Ramabhai, who was occupant in the motor vehicle. According to his chief examination, when they were returning after taking salary, near village cross road, the motor vehicle was capsized and due to which, one person died on the spot. He has further deposed that accused was not riding the vehicle properly. He has also deposed that the road upon which the accident took place is a curvy and single line road and surrounded by dense forest. As per deposition of PW 2 Mahendrabhai Kanaiyalal Gohel, he has deposed that when they reached near village, suddenly, the petitioner accused has taken the car on the road side and then he took on the road again and then again took out of the road and as such, the petitioner was not riding the car properly and that way was driving the car rashly and negligently and in a turning of the road, the car was capsized. As per deposition of PW 3 Dilipbhai Khandubhai, he has deposed that the car was riding at full speed and he was shouting there. As per deposition of PW 4 Dineshbhai Somabhai, when they reached near a spot adjacent to Ukai dam, the petitioner has taken the vehicle off the road and then again he took it on the road and as such, was driving the car rashly and negligently and thereafter, accident took place. As per deposition of PW Chandubhai Dhurabhai, he deposed that he was sitting next to driver and the petitioner was driving the car rashly and negligently. These are the contentions, which weighed the learned Courts below to believe that the petitioner accused was driving the car rashly and negligently. The learned first appellate Court has put seal over those findings. I am afraid to uphold the finding, more particularly, on the ground and reason that all the eye witnesses, who are in the motor vehicle, speak

different story or adduced different story. Their versions are inconsistent in regard to how the accident took place. It is an admitted fact that the motor vehicle turned turtle on the turning of the road. But no one have deposed that the accused was driving the car rashly and negligently knowing fully well the hazards of his riding that it will endanger the life of a person or his wanton act would cause death of someone.

18. None of the eye witnesses or the occupants of the motor vehicle deposed criminal rashness, which is equal to hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. It must be pointed out that rashness and negligence are not the same things., but to some extent, they are in diametric axis. Mere negligence cannot be construed to mean rashness. There are degrees of negligence and rashness and in order to amount to criminal rashness or criminal negligence one must find that the rashness has been of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby. Criminal negligence is gross and culpable neglect, that is to say, a failure to exercise that care and failure to take that precaution which, having regard to the circumstances, it was the imperative duty of the individual to take. Culpable rashness is acting with consciousness that mischievous consequences are likely to follow although the individual hopes, even though he hopes sincerely, that such consequences may not follow.

19. How to send the sample for analysis, learned APP referring to Form A, B and C at Exhs.16,18 and 19 would submit that the blood sample was taken from the body of the accused by the Medical Officer. The blood contained 0.0955% of Ethyl Alcohol and therefore, it is proved that the accused was in inebriated state and he was found with alcohol in blood. Therefore, the prosecution has proved the case that in inebriated state, the petitioner accused has driven the motor vehicle and dashed with the tree resulted into death of one person and another subsequently. The alcohol contained in the blood was more than the permissible limit and therefore, it is proved beyond reasonable doubt that the petitioner accused was riding the motor vehicle in a drunken condition and has dashed the vehicle with the tree. To meet with the submission, if we go through the documents placed on record at Exh.18, it indicates that according to form B, the blood sample was taken on 1.11.2004, but was sent for analysis on 8.11.2004 and in view of Exh.19, the report comes on 5.1.2005.

20. The Bombay Prohibition (Medical Examination And Blood Test) Rules, 1959 provides regulation for how to collect blood sample for analysis to see that whether the blood contains alcohol or not. How to send sample for analysis, Rule 3 and 4 are material. According to Rule 4, the syringe, in which blood is collected, shall be sterilized by putting in the boiling water before it is used and it is to be done by the registered medical practitioner. He shall use a syringe for the collection of the blood of the person produced before him. No alcohol shall be touched at any stage while withdrawing blood from the body of

the person. He shall withdraw not less than 5 c.c. of venous blood in the syringe from the body of the person. The blood collected in the syringe shall then be transferred into a phial containing anticoagulant and preservative and the phial shall then be shaken vigoreously to dissolve the anticoagulant and preservantive in the blood. The phial shall be lablled and its cap sealed by means of sealing wax with the official seal or the monogram of the registered medical practitioner and it shall be forwarded for test to the Testing Officer within seven days from the date of its collection along with forwarding letter in Form "B" which shall bear a fascsimile of the seal or monogram used for sealing the phial of the sample blood.

21. In background of the above provisions of law, if we peruse, what appears that the blood was taken on 1.11.2004 and sent for analysis on 8.11.2004 or 9.11.2004 beyond stipulated time period. Moreover, the entire form B is in typed format.

22. The doctor, who has taken the blood sample from the body of the petitioner accused has been examined as PW 11, but his deposition does not contain the mandatory requirement of the Bombay Prohibition (Medical Examination And Blood Test) Rules, 1959. Thus, the prosecution has failed to prove that the petitioner accused was in inebriated state. Yet overlooking to this technicality, if accept the evidence as it is and believed that the petitioner accused was in a drunken condition, the prosecution has failed to prove that it was not *causa causans* of the road accident. None of the eye witnesses have deposed to the effect that the petitioner accused was in a drunken condition

when the accident took place or drunken condition of the petitioner accused lead to road accident.

23. The meaning of *causa causans* has been explained by the Supreme Court in the case of Sushil Ansal v. State through Central Bureau of Investigation, (2014) 6 SCC 173, as under :

> *"As to what is meant by causa causans we may gainfully refer to Blacks Law Dictionary (Fifth Edition) which defines that expression as under:*
>
> *"Causa causans. The immediate cause; the last link in the chain of causation."*
>
> *The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines Causa causans as follows:*
>
> *Causa causans. The immediate cause as opposed to a remote cause; the last link in the chain of causation; the real effective cause of damage The expression proximate cause is defined in the 5th Edition of Blacks Law Dictionary as under:*
>
> *Proximate cause. That which in a natural and continuous sequence unbroken by any efficient, intervening cause, produces injury and without which the result would not have occurred. Wisniewski vs. Great Atlantic & Pacific Tea Company, 226 Pa. Super 574 : 323 A2d 744 (1974), A2d at p. 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission."*

24. Evidently, the prosecution has failed to link alleged drunken condition of the accused with the offence of rashness

and negligence resulted into impugned accident.

25. Thus, from the reasons stated herein above, this Court without hesitation would believe that the learned Courts below have committed serious error in interpretation of the evidence in background of the provisions of law. The critical examination of the evidence of the prosecution side, in my humble opinion, the prosecution had been hopelessly failed to prove rashness and negligency in the driving of the petitioner accused. None of the eye witnesses have deposed that the petitioner accused was riding the vehicle so recklessly indifference to the consequences or knowing fully well about the consequences of his wanton act, which would endanger the human life.

26. When a driving leads to an accident resulted into death or injury, the question arises as to whether it was rash and negligent driving. Mere negligence cannot be construed rashness. There are several other factors which are amongst to decide that whether rash and negligent driving was existed or not. The Court is required to decide the issue that whether driving leads to an accident is due to rash and negligent driving, more particularly, when the charges are under Section 279 and 304.A of the IPC are levelled and at that time it is required to reach to the decision that criminal rashness or criminal negligence was there on the part of the accused. Thus, to sustain the charge under Section 279 and 304A of the IPC, the prosecution is required to prove the rash and negligence on the part of the accused vis-a-vis knowing hazard and and knowledge of the accident. All these aspects are missing in the present case

and learned Courts below have failed to appreciate these aspects.

27. Normally, the Court in revisional jurisdiction would refrain from upturning concurrent findings of fact by the Court below, but if the findings arrived at by the learned Court below are antithetical to basic contour of the provisions of law and its application thereof. The revisional Court is required to interfere to do justice and correct error committed by the learned Court below. In background of the above discussion, this is a fit case to exercise revisional jurisdiction and to interfere with the impugned orders.

28. For the foregoing reasons, the revision succeeds. Both the learned Courts below have committed serious error in holding the petitioner as rash and negligent driving in absence of any evidence. Thus, both the judgment and order of the learned Courts below are quashed and set aside. The petitioner is acquitted of the charges levelled against him. Bail bond stands cancelled. The amount of fine if paid shall be refunded to petitioner on proper verification and identification. R & P be sent back. Rule is made absolute to the aforesaid extent.

(J. C. DOSHI,J)

SHEKHAR P. BARVE