IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 23.12.2025
Judgment pronounced on : 17.04.2026

\+ **CRL.REV.P. 564/2023 & CRL.M.A. 13482/2023**

MASTER M .....Petitioner

versus

STATE OF NCT OF DELHI .....Respondent

Advocates who appeared in this case:

For the Applicant :Mr. Hrishikesh Baruah, Mr. Kumar Kshitij, Ms. Pragya Agarwal, Mr. Utkarsh Dwivedi, Ms. Nishtha Sacha & Mr. Yashashwy Ghosh, Advs.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the State.
SI Prabash, PS- DIV/ North
Mr. Shri Singh & Ms. Arunima Nair, Advs. for victim.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

J U D G M E N T

1. The present criminal revision petition has been filed under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('**JJ Act**'), assailing the order dated 18.03.2023, passed by the learned Principal Magistrate, Juvenile Justice Board-III, Delhi,

whereby the Board proceeded to frame notice/charges against the Petitioner/Master M, a Child in Conflict with Law ('**CCL**'), for the offence punishable under Section 304 Part-II of the Indian Penal Code, 1960 ('**IPC**'), along with offences punishable under Sections 3, 4 read with Section 181 and Sections 134 and 187 under the Motor Vehicles Act, 1988 (**'MV Act'**). The Petitioner/CCL has also challenged the Notice dated 23.03.2023 issued under Section 251 of the Code of Criminal Procedure, 1973 (**'CrPC'**).

QUINTESSENTIAL FACETS GOVERNING THE PRESENT ISSUE: -

2. Succinctly stated, the case of the prosecution originates from a PCR call received *via* DD No. 28A on 04.04.2016 at about 8:55 PM, informing the police that a person had been found injured due to an accident near Shyam Nath Marg, Civil Lines, Delhi. On receipt of the said information, the officers reached the spot, where a *Mercedes Benz car bearing registration no. DL-2 FCM-3000* C-200 compressor was found stationed, in an accidental condition, near the red light. Upon inquiry, it was revealed that the injured person, later identified as Siddharth Sharma, had already been shifted to Sant Parmanand Hospital. At that stage, the injured was declared unfit for statement. No eye-witness was stated to have been found either at the spot or in the hospital at that time.

3. Consequently, FIR No. 118/2016 dated 04.04.2016 was registered at Police Station Civil Lines, initially for the offences punishable under Sections 279 and 337 of the IPC against the Petitioner/CCL.

4. The victim, however, succumbed to his injuries on 05.04.2016 and thus, DD No. 3A was recorded and section 337 was substituted with section 304A of the IPC.

5. During the course of investigation, on 05.04.2016, three eyewitnesses, namely Mr. Girish Kumar, Mr. Pradeep Satia and Mr. Narender Singh were examined by the IO and in their statements under section 161 of the CrPC, they stated that at 08.45 PM, offending Mercedes car bearing No. DL 2F CM 3000, came in a very high speed and hit the deceased/ Shiddharth Sharma, who was crossing the road and consequently that person fell on the road after bouncing 15/20 feet in the Air and sustained injuries. After the accident 6-7 boys, aged about 15-18 years, de-boarded the car and ran away from the spot. Thereafter, they shifted the injured to Sant Parmanand Nand Hospital.

6. It is alleged that during the inquiry, the owner of the vehicle was traced and found to be Mr. Manoj Agarwal i.e. the father of the Petitioner/CCL herein. Though one Kapil Sharma, the driver employed with Mr. Manoj Agarwal, initially claimed to be driving the offending vehicle on the date of the accident, however, during interrogation, it was revealed that the vehicle was allegedly being driven by the present Petitioner/CCL, who was *17 years, 11 months and 26 days old* at the time of the incident.

7. It is alleged that on 08.04.2016, since it emerged that the CCL has a history of traffic violations and his father also did not stop the Petitioner/CCL from driving the car, Section 109 of the IPC was added. On the basis of the CCTV footage obtained, which

demonstrated that the offending vehicle was being driven at a very high speed and in a manner endangering human life, Section 304 of the IPC was also added.

8. It is alleged that on 04.06.2016, the learned JJB directed that the present Petitioner/CCL be treated as an *adult* and after dismissal of the surrender-cum-bail application filed by the Petitioner/CCL, he was apprehended and produced before the learned JJB and 2 days custody, under the supervision of Welfare officer, was granted.

9. During inquiry, six other occupants i.e. the friends of the Petitioner/CCL namely - Ansh Malhotra, Ayush Malhotra, Sanath Goel, Shrey Monga, Dhruv Gautam and Ayush Mohan Rastogi, who were also stated to be present in the offending vehicle at the time of the incident, were traced. Their statements under Section 161 and 164 of the CrPC were recorded and it is alleged that all the boys have essentially stated that on 04.04.2016, while they were playing Football and Cricket at Mall Apartment Ring Road, the Petitioner/CCL asked them to accompany him to his Apartment in his Mercedes Bens car No DL 2F CM 3000. Initially, even Dhruv Gautam refused to travel in the Petitioner's car, stating that he drives the car rashly and at a high speed. After convincing, Dhruv Gautam sat on lap of Ansh Malhotra on front seat, while the Petitioner/CCL was on driving seat and Sanat, Ayush Malhotra, Ayush Rastogi and Shrey were on rear seat of the offending car. It is alleged that the Petitioner/CCL started driving the car in a rash and dangerous manner and they had even warned and requested him multiple times, but the Petitioner/CCL did not pay any

heed to such requests and advice and he drove the vehicle in a manner that could result in the death of any person. Even two motorcycle riders also had a very narrow escape near Khyber Pass, before the accident.

10. The prosecution has also alleged that Shrey and Ansh Malhotra have specifically stated that the Petitioner/CCL was driving the car at the speed of 80-85 Kmph and Dhruv mentioned that the Petitioner/CCL usually overspeed's and drives rashly, in a zig zag manner and hence, he does not like to travel with the Petitioner/CCL in his car.

11. It is further alleged that during investigation, it emerged that the Petitioner's Mercedes had also met with an accident with the vehicle of one Varun Jain on 16.02.2016 and the Petitioner/CCL managed to settle the matter *vide* Compromise settlement dated 16.02.2016. The statement under Section 161 of the CrPC of Mr. Varun Jain was also recorded and it is alleged that on that date as well, the Mercedes was being driven by a boy who did not have a license.

12. It is further alleged that, details of challan were obtained from Todapur Traffic Office, and it was found that he had been challaned thrice i.e. on 25.02.2014 under sections RRR 17(1)/177 MV Act; on 19.09.2014 under sections CMVR 138(3)/177 MV Act; and on 17.06.2015 under sections 112.1/183(1) MV Act.

13. It is further alleged that on 18.04.2016, another witness, namely Amanjit Singh Bhata Aman, was also examined under Section 161 of the CrPC, who has stated that on 04.04.2016, while he was travelling

on his motorcycle with his friend, they had a narrow escape from the offending Mercedes car, which was being driven at about 100 kmph and when they followed the car, they reached the spot of the accident where the victim was found seriously injured and occupants of the car managed to escape.

14. It is further alleged that the PCR caller namely, Vijender Nagar was also examined under sections 161 of the CrPC, who has also stated that on 04.04.2016, while he was on his motorcycle, he had a narrow escape from the offending vehicle, which was being driven at about 100 Kmph and after following the same, he reached the accident spot, where the victim was lying in an injured condition. The boys in the car, aged 16-17 years ran away from the spot and he along with other people who had gathered there, shifted the victim to SPN Hospital.

15. Hence, the chargesheet was filed on 14.05.2016, under sections 304/201 of the IPC, read with Sections 4/181 and 34/187 of the M.V. Act, since there was sufficient material to demonstrate that the Petitioner/CCL had knowledge that his act is likely to cause death and since he was merely 4 days short from attaining majority, he also possessed the mental capacity/maturity to understand the consequences of his actions and is thus, liable to be treated as an adult.

16. In the interim, the appeal filed against Order dated 04.06.2016, *vide* which the Petitioner/CCL was directed to be treated as an adult, was dismissed on 11.02.2019. The same was assailed *vide* Criminal Revision Petition bearing No. 351/2019 and this Court *vide* order

dated 01.05.2019 set-aside the order dated 11.02.2019 by holding that the offence committed by the Petitioner/CCL does not come in the category of "*heinous offences*" and therefore, the present Petitioner/CCL cannot be tried as an '*adult*'. The Crl. Appeal No. 34 of 2020 challenging the same was dismissed by the Hon'ble Supreme Court *vide* Order dated 09.01.2020.

17. Upon filing of the charge-sheet, the matter came up before the learned JJB, which, heard arguments on the point of framing of notice and by the impugned order dated 18.03.2023 opined that: -

a) Notice for commission of offence under Section 304 Part-II of the IPC is to be framed against the Petitioner/CCL as it can be said, without any conclusive findings, that he had *knowledge* that his act of driving the car dangerously at a high speed can likely cause death though he had no intention to cause death.

b) Since the Petitioner/ CCL was driving without a valid driving license on the date of the incident and thus, Notice under sections 3/181 and 4/181 of the MV Act is also framed;

c) Since it has been alleged that the Petitioner/CCL ran away from the place of the incident and abandoned the victim, Notice under section 134/187 MV Act is also framed.

18. Hence, the impugned Notice under section 251 of the CrPC dated 23.03.2023 was served upon the Petitioner/CCL, to which he pleaded not guilty and claimed inquiry. The relevant extract is reproduced as under: -

> *"That this Board has received a complaint that on 04.04.2016 at around 08:45PM, at Shyam Nath Marg, Civil lines while going from Mall Apartment, Civil Lines to Oberoi Apartment, Civil Lines, Delhi, within the jurisdiction of PS Civil Lines, you juvenile were found driving a car bearing regn. no. DL-2FCM- 3000 without a valid driving license at a very high speed of about 80-85 kms. per hour, so as to endanger public safety and human life of others and while driving in such manner you struck the victim (since deceased) Sh. Siddharth Sharma and caused his death, having knowledge that your driving at a high speed at that time and place is likely to cause death and after that the said incident you ran away from the spot of the incident, thus, you have committed the offences punishable* ***under 304 Part II IPC & 3/181, 4/181 and 134/187 of M.V. Act*** *and within cognizance of this Board."*

SUBMISSIONS ON BEHALF OF THE PETITIONER: -

19. Learned counsel appearing on behalf of the Petitioner/CCL submits that the impugned orders suffer from a fundamental error of law, inasmuch as the material placed on record, even if taken at its highest, does not disclose the essential ingredients of *culpable homicide not amounting to murder*, specifically "*knowledge that it is likely to cause death*", so as to attract Section 304 Part-II of the IPC. Reliance is placed upon ***Mahadev Prasad Kaushik Vs. State of UP,* 2008 (14) SCC 479,** ***Abdul Kalam Musalman and Ors. Vs. State of***

***Rajasthan,* 2011 Cri. LJ 2507** and ***Yuvraj Laxmilal Kanther and Anr. Vs. State of Maharashtra,* 2025 SCC Online SC 520.**

20. It is submitted that the manner of accident does not reflect attribution of any *knowledge* to the Petitioner that death was likely to be caused in all probability. On the contrary, the witnesses consistently state that the offending vehicle was travelling at the speed approximately 60-70 kmph and when the Petitioner/CCL reached the traffic light and realized that there are only 5-6 Seconds for the light to turn '*Red*' from '*Green*', then only the speed of the offending vehicle was increased to around 80 kmph. It is further submitted that there was no '*Zebra Crossing'* where the victim was allegedly hit and even the light was '*Green'*. It has also come on record that the road was '*fairly empty*' and there was no traffic at all in the said place.

21. It is further submitted that the Petitioner/CCL had tried to save the deceased but it is the victim who suddenly got confused and changed his direction, which led to the accident, which could have been otherwise avoided. Reliance is placed upon the photographs and the CCTV footage of the accident.

22. It is further contended that it is no more *res integra* that mere speed, even if assumed to be on the higher side, cannot by itself be equated with the knowledge contemplated under Section 299 of the IPC and Rashness or recklessness alleged on the basis of high speed remains within the domain of Section 304A of the IPC. To buttress the same, reliance is paced upon, ***Prabhakaran Vs State of Kerala* 2007**

(14) SCC 269, ***State of Karnataka Vs. Satish*** **1998 (8) SCC 493 and** ***Abdul Subhan Vs. State*** **133 (2006) DLT 562.**

23. It is further submitted that even the reliance placed by the prosecution on the judgments of ***Alister Anthony Pareira Vs. State of Maharashtra,*** **2012 (2) SCC 648** and ***State Vs. Sanjeev Nanda,*** **2012 (8) SCC 450** is misplaced, as they pertain to situations where the accused persons/drivers were driving under the influence of liquor and had run over multiple victims.

24. It is further submitted if the argument of the complainant is accepted that merely because the accused was a minor and thus, it implies that he had *knowledge that the act is likely to cause death*, the offence of driving by a minor which had resulted in the death of a person, would necessarily involve framing of a much graver charge under Section 304 Part-II of the IPC and there can be no case for the offence to fall under Section 304A of the IPC, which would essentially mean rewriting the law by striking-off Section 304A from the Statue Book for the case of a minor.

25. It is further submitted that even otherwise, the Petitioner/CCL was merely 4 days short of attaining the age of majority, had attained the discretion to drive a car effectively and cannot be stated to be "*immature*". Even Section 4 of the MV Act, permits a license to a 16-year-old for riding a 50cc motorcycle. The prosecution has rather taken a contradictory stand, that on one hand it is pleaded that the Petitioner/CCL had attained sufficient maturity to understand the consequences and gravity of his act and should be tried as an adult, but

on the other hand claims that since he was a minor, he did not possess the "*maturity*" to drive a car effectively.

26. It is further submitted that even section 134/187 of the MV Act is not made out as, after the incident, as stated by Shrey Monga, the Petitioner/CCL had put the deceased in an auto so that he can be transported to the hospital and the medical expenses were also deposited by the Petitioner's father.

CONTENTIONS ON BEHALF OF THE STATE AND COMPLAINANT: -

27. *Per contra*, the learned Additional Public Prosecutor appearing on behalf of the State and the Counsel for the Complainant, submit that the impugned orders and the Notice under section 251 of the CrPC, do not warrant any interference, as the learned JJB has correctly appreciated the material on record.

28. A preliminary objection with respect to maintainability of the petition has been pressed. It is contended that the proceedings that led to the framing of Notice were admittedly based on the procedure prescribed for trial of summons cases by Magistrates under Chapter XX of the CrPC and it is well-settled that no detailed arguments could be led at the stage of notice, which was considered to be a formal process and there is no scope for an order akin to discharge at the stage when notice was framed against the accused under Section 251 of the CrPC. Reliance is placed upon ***Subramanium Sethuraman v. State of Maharashtra and Anr.*, (2004) 13 SCC 324**.

29. It further submitted that the element of "*knowledge*" that the act is likely to cause death for attracting the offence of 304 Part II, is discernible from the entirety of the circumstances and the manner of the accident. Firstly, the Petitioner/CCL was driving the offending car at a speed of approximately 100 kmph whereas the permissible limit was 50 Kmph and did not heed to the warnings/requests of his friends/co-occupants. Secondly, he was a minor and was driving without a valid licence and there is a presumption that he did know how to drive a vehicle. Thirdly, there are no skid marks and he not apply breaks or make any efforts to avoid the accident. Lastly, he has previous challans, is a repeat offender, has been previously involved in an accident and he was about to run over other motorcyclists as well.

30. It is further submitted that, as per ***Ghulam Hassan Beigh* v. *Mohammad Maqbool Magrey and Ors.*, (2022) 12 SCC 657,** in such circumstances where the case can ultimately be proved after the entire evidence is led, the learned JJB has rightly proceeded under section 304 part II, which is a higher offence, since it would be open for the accused to persuade the Board at the end of the trial that the case falls within the ambit of lesser offence and avoid the re-commencing of the trial afresh if it is found later that the higher offence of 304 part II was made out.

31. It is further submitted that, without prejudice, even otherwise, whether the offence falls under Section 304 Part-II or Section 304A of the IPC is a matter to be decided after evidence is led by the parties and cannot be decided at this stage.

32. It is further submitted that the post-incident conduct, as stated by the eye-witness demonstrates that the victim was abandoned by the Petitioner/CCL, who neither called the PCR, nor helped the injured and thus, notice under section 134 of the MV Act has been rightly framed. Hence, it is prayed that the revision petition be dismissed.

33. Submissions heard and the record along with the written submissions as well as the judgments have been perused.

ANALYSIS AND FINDINGS: -

34. The present petition has been preferred under Section 102 of the JJ Act, which confers revisional jurisdiction only upon High Court and empowers the High Court to call for records of any proceeding before a Board, Children's Court, or Committee to examine the *legality or propriety* of any order, acting on its own motion or *via* application. The revisional power is supervisory in nature and does not permit substitution of the Court's view merely because another view is possible.

35. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge/notice of accusation is well circumscribed. The power ought to be exercised sparingly, in the interest of justice and it is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

36. In the present case, the impugned order and Notice arise at the stage of Section 251 of the CrPC and it is well settled that at the stage of Section 251 of the CrPC, the Court is required to state the substance

of accusation to the accused upon being satisfied that the allegations in the police report, if taken at face value, disclose the commission of an offence. The provision does not contemplate a detailed evaluation of evidence, nor does it require the Court to determine the likelihood of conviction. The test is confined to whether the ingredients of the alleged offence are *prima facie* disclosed on the basis of the material placed by the prosecution.

37. Though the present case arises at the stage of Section 251 CrPC (summons case) the principles governing framing of charge can be relied upon to understand the contours of a "*prima facie case*", albeit with greater circumspection, since Section 251 does not contemplate discharge in the manner provided for in warrant cases. The Hon'ble Apex Court in ***Union of India v. Prafulla Kumar Samal* : (1979) 3 SCC 4**, dealt with the scope of enquiry a judge is required to make with regard to the question of framing of charges. *Inter alia*, the following principles were laid down by the Court:

> *"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
> *(1)* ***That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.***
> *xxx xxx xxx*
> *(3)* ***The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application.*** *By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the*

accused, he will be fully within his right to discharge the accused."

(emphasis supplied)

38. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI* : (2010) 9 SCC 368**, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read as under:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
(v) At the time of framing of the charges, ***the probative value of the material on record cannot be***

> ***gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of***
> ***offence by the accused was possible.***
> *(vi)* ***At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.***
> *(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage,* ***he is not to see whether the trial will end in conviction or acquittal.****"*
>
> (emphasis supplied)

39. In ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** **: (2023) 17 SCC 688**, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge, as under:

> *"7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the*

documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

xxx xxx xxx

12. ***The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into.*** *This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."*

(emphasis supplied)

40. Hence, the foundational threshold, at this stage, is that the Court is only required to examine whether the material placed on record, if taken at face value, discloses a *prima facie case* regarding the commission of the offence alleged and the Court is not expected to conduct a mini trial for the purposing of weighing the evidence.

41. Since the principal submission of the Petitioner is that, even accepting the prosecution case in its entirety, the essential ingredient

of "*knowledge*" as contemplated under Section 299 of the IPC is not made out, it would be apposite to understand the relevant legal provisions of the IPC, which are reproduced as under: -

> ***" Section 304 : Punishment for culpable homicide not amounting to murder.—****Whoever, commits culpable homicide not amounting to murder shall be punished with (imprisonment of life), or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,*
> *Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the* ***knowledge*** ***that it is likely to cause death****,* ***but without any intention to cause death****, or to cause such bodily injury as is likely to cause death.*
> ***Section 304A : Causing death by negligence.—****Whoever causes the death of any person by doing* ***any rash or negligence act not amounting to culpable homicide,*** *shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*
> ***Section 299 : Culpable homicide.—****Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the* ***knowledge*** ***that he is likely by such act to cause death****, commits the offence of culpable homicide."*

42. A bare perusal of the above sections reflects that the distinction between Section 304 Part II and Section 304A IPC lies in the *mental element* accompanying the act. While Section 304A contemplates *death caused by rash or negligent conduct*, Section 304 Part II is

attracted where the act is done *with the knowledge that it is likely to cause death*, though *without any intention* to cause death. "*Knowledge*" in this context denotes an awareness of the likelihood of fatal consequences arising from the act committed. Such knowledge is ordinarily inferred from the nature of the act, the surrounding circumstances, and the degree of risk inherent in the conduct.

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

> ***" 20.*** *The question then is as regards issuance of summons under Section 304 IPC. Section 304 reads thus:*
>
> > *"304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*
> >
> > *or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."*
>
> *A plain reading of the above section makes it clear that it is in two parts. The first part of the section is generally referred to as* ***Section 304 Part I,*** *whereas the second part as* ***Section 304 Part II.*** *The first part applies where the accused causes bodily injury to the victim* ***with intention*** *to cause death; or* ***with intention*** *to cause such bodily injury as is likely to cause death.* ***Part II****, on the other hand, comes into play when death is caused by doing an act* ***with knowledge*** *that it is likely to cause death,* ***but***

without any intention to cause death *or to cause such bodily injury as is likely to cause death.*

21. *The makers of the Code observed:*

> *"**The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused**, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place, **unless such intention or knowledge can from the evidence be concluded to have really existed**."*

The makers further stated:

> *"It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men's conduct and their intentions. We know that a sane man does not usually commit certain acts heedlessly or unintentionally and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion."*

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

> *(i) the death of the person must have been caused;*
>
> *(ii) such death must have been caused by the act of the accused by causing bodily injury;*
>
> *(iii) there must be an intention on the part of the accused:*
>
> *(a) to cause death; or*
>
> *(b) to cause such bodily injury which is likely to cause death (Part I);*
>
> ***(iv) there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II).***

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

> *"304-A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

The section deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of Sections 299 and 300 IPC and covers those cases where death has been caused without intention or knowledge. The words "not amounting to culpable homicide" in the provision are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death, nor knowledge that the act done will in all probability result into death. It applies to acts which are rash or negligent and are directly the cause of death of another person.

24. There is thus distinction between Section 304 and Section 304-A. Section 304-A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300 IPC. In other words, Section 304-A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the "motivating force" of the act complained of, Section 304-A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.

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

> *"… **criminal rashness is hazarding a dangerous or wanton act with the knowledge** that it is so, and that it may cause injury, but without intention to cause injury**, or knowledge that it will probably be***

> ***caused.*** ***The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences.*** ***Criminal negligence*** ***is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted."***
>
> ***26.*** *Though the* ***term "negligence"*** *has not been defined in the Code, it may be stated that negligence is the* ***omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do.***
>
> ***27.*** *The learned counsel for the appellant-accused submitted that by no stretch of imagination, can it be said that the appellant while administering injections to deceased Buddha Ram is said to have committed an offence punishable under Section 304 IPC.* ***It can never be said that the death of Buddha Ram had been caused by the appellant by doing the act of giving injections with intention to cause his death or to cause such bodily injury as is likely to cause death. Likewise, it is impossible to think that the purported act has been done by the appellant-accused with the knowledge that in all probability, it would result into the death of Buddha Ram."***
>
> (Emphasis supplied)

44. Hence, the above judgment, crystalized the conceptual distinction between the mental elements of *intention*, *knowledge*, *rashness* and *negligence* in the context of Sections 299, 304 and 304A of the IPC. While *intention and knowledge* constitute the mental elements for culpable homicide, and *rashness* constitutes the mental element for 304 A. It is important to note that the concept of "*knowledge*" appears

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

45. Similar view has been echoed by the Hon'ble Apex Court in the case of ***Prabhakaran*** (supra). The case centres around a motor vehicle accident caused by the accused bus driver, who ran his bus over a 10-year-old boy. Initially, considering that the bus driver had ignored the warnings of the pedestrians and the passengers cautioning him to not drive the bus recklessly (thereby implying that he had *knowledge* that death is likely to be caused), he was convicted under Section 304 Part II by the learned Trial Court as well as the High Court. However, while allowing the appeal of the accused and convicting him under the

Section 304 A of the IPC, the Hon'ble Apex Court not only delineated the boundary between Sections 304 Part II and 304 A but also explicated the distinction between *criminal rashness* and *criminal negligence* within the framework of Section 304A. On a detailed evaluation of the evidence on record, it was held that there was no evidence to suggest that the accused had the *knowledge that his act was likely to cause death*, thereby excluding the application of Section 304 Part II. It was re-iterated that *criminal rashness* connotes an act done with the consciousness of a risk that evil consequences may follow, yet with the hope that they will not, whereas *criminal negligence* implies a breach of duty to take care, marked by a failure to exercise reasonable and proper caution expected in the circumstances. Both concepts fall within the ambit of Section 304A when death is caused *without intention or knowledge*. The relevant extract is reproduced as under: -

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

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

> *"Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence, and a very high degree of negligence is required to be proved before the felony is established. Probably of all the epithets that can be applied 'reckless' most nearly covers the case.* ***It is difficult to visualise a case of death caused by 'reckless' driving, in the connotation of that term in ordinary speech, which would not justify a conviction for manslaughter, but it is probably not all-embracing, for 'reckless' suggests an indifference to risk, whereas the accused may have appreciated the risk, and intended to avoid it, and yet shown in the means adopted to avoid the risk such a high degree of negligence as would justify a conviction****."*

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

Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. ***As noted above, 'rashness' consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences.*** *Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.*

9. The distinction has been very aptly pointed out by Holloway, J. in these words:

> *'Culpable rashness is acting with the consciousness that the mischievous and* ***illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening.*** *The imputability arises from acting despite the consciousness (luxuria). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection.' (See Nidamarti Nagabhushanam, In re [7 Mad HCR 119] , Mad HCR pp. 119-20.)*

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8. When the factual scenario of the present case is analysed, it is crystal clear that the appropriate conviction would be under Section 304-A IPC and not Section 304 Part II IPC. *Conviction is accordingly altered. The maximum sentence which can be imposed for offence punishable under Section 304-A is two years with fine or with both. The custodial sentence, therefore, is reduced to the maximum i.e. two years."*

(emphasis supplied)

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

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

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

49. However, the Hon'ble Apex Court, in ***Alister Anthony Pareira*** (supra), in the context of drunken driving, opined that some motor vehicle cases are not mere rashness and negligence but culpable homicide (304 Part II), when the evidence demonstrates that driver *knows that his act is so dangerous that it is likely to cause death*. In the facts of that case, the car driven by the accused, in a drunken state, ran over laborers sleeping on the pavement, killing seven persons and causing injuries to about eight persons. The learned Trial Court initially convicted the accused under Section 304 A and 337 of the IPC, while the High Court altered the conviction under section 304 A

to Section 304 Part II. While dismissing the appeal of the accused and upholding the view adopted by the High Court, it was held as under: -

> ***" 38. Insofar as Section 304-A IPC is concerned, it deals with death caused by doing any rash or negligent act where such death is caused neither intentionally nor with the knowledge that the act of the offender is likely to cause death.*** *The applicability of Section 304-A IPC is limited to rash or negligent acts which cause death but fall short of culpable homicide amounting to murder or culpable homicide not amounting to murder. An essential element to attract Section 304-A IPC is death caused due to rash or negligent act. The three things which are required to be proved for an offence under Section 304-A are:*
>
> ***(1) death of human being;***
>
> ***(2) the accused caused the death; and***
>
> ***(3) the death was caused by the doing of a rash or negligent act, though it did not amount to culpable homicide of either description.***
>
> ***39.*** *Like Section 304-A, Sections 279, 336, 337 and 338 IPC are attracted for only the negligent or rash act.* ***The scheme of Sections 279, 304-A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life.***
>
> ***40.*** *The question is whether indictment of an accused under Section 304 Part II and Section 338 IPC can coexist in a case of single rash or negligent act. We think it can. We do not think that the two charges are mutually destructive.* ***If the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused, then not only that the punishment is for the act but also for the resulting homicide and a case may fall within Section 299 or Section 300 depending upon the mental state of the accused viz. as to whether the act was done with one kind of knowledge or the other or the intention.***

Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known.

41. Rash or negligent driving on a public road with the knowledge of the dangerous character and the likely effect of the act and resulting in death may fall in the category of culpable homicide not amounting to murder. *A person, doing an act of rash or negligent driving, if aware of a risk that a particular consequence is likely to result and that result occurs,* ***may be held guilty not only of the act but also of the result.*** *As a matter of law—in view of the provisions of IPC—the cases which fall within the last clause of Section 299 but not within clause "Fourthly" of Section 300 may cover the cases of rash or negligent act done with the knowledge of the likelihood of its dangerous consequences and may entail punishment under Section 304 Part II IPC. Section 304-A IPC takes out of its ambit the cases of death of any person by doing any rash or negligent act amounting to culpable homicide of either description.*

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

43. *In view of the above, in our opinion there is no impediment in law for an offender being charged for the offence under Section 304 Part II IPC and also under Sections 337 and 338 IPC. The two charges*

under Section 304 Part II IPC and Section 338 IPC can legally coexist in a case of single rash or negligent act where a rash or negligent act is done with the knowledge of likelihood of its dangerous consequences.

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

45. *In Prabhakaran v. State of Kerala [(2007) 14 SCC 269 : (2009) 1 SCC (Cri) 873] this Court was concerned with the appeal filed by a convict who was found guilty of the offence punishable under Section 304 Part II IPC. In that case, the bus driven by the convict ran over a boy aged 10 years. The prosecution case was that the bus was being driven by the appellant therein at enormous speed and although the passengers had cautioned the driver to stop as they had seen children crossing the road in a queue, the driver ran over the student on his head. It was alleged that the driver had real intention to cause death of persons to whom harm may be caused on the bus hitting them. He was charged with offence punishable under Section 302 IPC. The trial court found that no intention had been proved in the case but at the same time the accused acted with the knowledge that it was likely to cause death, and, therefore, convicted the accused of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced him to undergo rigorous imprisonment for five years and pay a fine of Rs 15,000 with a default sentence of imprisonment for three years. The High Court dismissed the appeal and the matter reached this Court.*

46. *While observing that Section 304-A speaks of causing death by negligence and applies to rash and*

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

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

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Re : Question (iii)

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

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74. The above evidence has been considered by the High Court quite extensively. The High Court, on consideration of the entire prosecution evidence and having regard to the deficiencies pointed out by the defence, reached the conclusion that (1) the accused at the time of driving the car was under the influence

of liquor; (2) he drove the car in a drunken condition at a very high speed; and (3) he failed to control the vehicle and the vehicle could not be stopped before it ran over the people sleeping on the pavement.

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75. ***The High Court observed that the accused could not concentrate on driving as he was under the influence of liquor and the vehicle was being driven with loud noise and a tape recorder being played in high volume****. The High Court held that the accused had more than 22 ft wide road for driving and there was no occasion for a driver to swing to the left and cover a distance of more than 55 ft; climb over the footpath and run over the persons sleeping on the footpath.*

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78. *We have also carefully considered the evidence let in by the prosecution—the substance of which has been referred to above—and we find no justifiable ground to take a view different from that of the High Court. We agree with the conclusions of the High Court and* ***have no hesitation in holding that the evidence and materials on record prove beyond reasonable doubt that the appellant can be attributed with knowledge that his act of driving the vehicle at a high speed in a rash or negligent manner was dangerous enough and he knew that one result would very likely be that people who were asleep on the pavement may be hit, should the vehicle go out of control.***

79. ***There is a presumption that a man knows the natural and likely consequences of his acts. Moreover, an act does not become involuntary act simply because its consequences were unforeseen. The cases of negligence or of rashness or dangerous driving do not eliminate the act being voluntary. In the present case, the essential ingredients of Section 304 Part II IPC have been successfully established by the prosecution against the appellant.*** *The infirmities pointed out by Mr U.U. Lalit, learned Senior Counsel for the appellant, which have been noticed above are not substantial and in no way affect the legality of the trial and the conviction of the appellant under Section*

304 Part II IPC. We uphold the view of the High Court being consistent with the evidence on record and law."
(emphasis supplied)

50. Similarly, the case of ***Sanjeev Nanda*** (supra) relates to an unfortunate motor vehicle accident, caused by the accused, who under the influence of alcohol, ran over his BMW car over 7 persons. On the basis of the evidence placed forth, the learned Trial Court convicted the accused under section 304 Part II of the IPC, however, the appeal against the same was allowed and the High Court converted the conviction of the accused from Section 304 part II to 304 A, observing that there was no "*knowledge*" of causing death. The Hon'ble Apex Court restored the conviction under Section 304 Part II, holding that from the aggravated circumstances and the manner of accident i.e. driving a high-powered vehicle in a drunken condition at high speed in a public place, and continuing to drive even after hitting persons, clearly reflected that the accused had the *knowledge that his act was likely to cause death*. It was further emphasized that *knowledge* can be inferred from the circumstances and the nature of the act and that such cases cannot be treated as mere negligence. The relevant extract is reproduced as under: -

> ***" 26.*** *After having critically gone through the evidence available on record, we have no doubt in our mind that the accident had occurred solely and wholly on account of rash and negligent driving of BMW car by the respondent, at a high speed, who was also intoxicated at that point of time. This fact has been admitted by the respondent-accused at the appellate stage in the High Court that at the relevant point of time, the respondent was driving the vehicle and had caused the accident but*

even then, it would be only his rash and negligent act, attracting Section 304-A IPC only. Even though it is difficult to come to the aforesaid conclusion, since he was in an inebriated condition. For the simple reason that he had already driven almost 16 km from the place where he had started, to the point where he actually met with the accident without encountering any untoward incident would not go absolutely in favour of the respondent. There is no evidence on record that they had consumed more liquor on their way also. No such material objects were recovered from the vehicle, to suggest that even while driving they were consuming liquor. One may fail to understand if one could drive safely for a distance of 16 km, then whether the effect of intoxication would rise all of a sudden so as to find the respondent totally out of control. There is nothing of that sort but it cannot be denied that he must have been a little tipsy because of the drinks he had consumed some time back. It is, indeed, extremely difficult to assess or judge when liquor would show its effect or would be at its peak. It varies from person to person.

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29. *It has also come on record that seven persons were standing close to the middle of the road. One would not expect such a group, at least, at that place of the road, that too in the wee hours of the morning, on such a wintry night. There is every possibility of the accused failing to see them on the road. Looking to all this, it can be safely assumed that he had no intention of causing bodily injuries to them but he had certainly knowledge that causing such injuries and fleeing away from the scene of accident, may ultimately result in their deaths.*

30. *It is also pertinent to mention that soon after hitting one of them, the accused did not apply the brakes so as to save at least some of the lives. Since all the seven of them were standing in a group, he had not realised that impact would be so severe that they would be dragged for several feet. Possibility also cannot be ruled out that soon after hitting them, the respondent, a young boy of 21 years then, might have gone into trauma and could not decide as to what to do until the vehicle came*

to a halt. He must have then realised the blunder he committed.

31. *The respondent, instead of rendering a helping hand to the injured, ran away from the scene, thus adding further to the miseries of the victims. It is not a good trend to run away after causing motor road accidents. An attempt should be made to render all possible help, including medical assistance, if required. Human touch to the same has to be given.*

32. *An aspect which is generally lost sight of in such cases is that bodily injuries or death are as a consequence of accidents. "Accident" has been defined by Black's Law Dictionary as under:*

*"**Accident**.—(1) An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated."*

Thus, it means, if the injury/death is caused by an accident, that itself cannot be attributed to an intention. If intention is proved and death is caused, then it would amount to culpable homicide.

33. *It is to be noted that in Alister Anthony Pareira case [(2012) 2 SCC 648 : (2012) 1 SCC (Cri) 953 : (2012) 1 SCC (Civ) 848] , the earlier two judgments of this Court in State of Gujarat v. Haidarali Kalubhai [(1976) 1 SCC 889 : 1976 SCC (Cri) 211] and Naresh Giri v. State of M.P. [(2008) 1 SCC 791 : (2008) 1 SCC (Cri) 324] , both rendered by a Bench of two learned Judges of this Court, were neither cited nor have been referred to. Thus, the ratio decidendi of these cases has not at all been considered in Alister case [(2012) 2 SCC 648 : (2012) 1 SCC (Cri) 953 : (2012) 1 SCC (Civ) 848] .*

34. *In the former case, it has been held in paras 4 and 5 as under: (Haidarali Kalubhai case [(1976) 1 SCC 889 : 1976 SCC (Cri) 211] , SCC p. 891)*

"4. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 IPC or murder under Section 300 IPC. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some persons, it will not be a case of mere rash and negligent driving

and the act will amount to culpable homicide. Each case will, therefore, depend upon the particular facts established against the accused.

5. The prosecution in this case wanted to establish a motive for committing the offence against the Sarpanch. It was sought to be established that there was enmity between the Sarpanch and the accused and his relations on account of panchayat elections. Some evidence was led in order to prove that the accused and his relations were gunning against the Sarpanch for some time after the latter's election as Sarpanch. Even an anonymous letter was received by the Sarpanch threatening his life which was handed over to the police by the Sarpanch. Both the Sessions Judge as well as the High Court did not accept the evidence appertaining to motive. Mr Mukherjee, therefore, rightly and very fairly did not address us with regard to that part of the case. Even so, the learned counsel submits that the act per se and the manner in which the vehicle was driven clearly brought the case under Section 304 Part II IPC."

35. *It is further held in the same judgment at para 10 as under: (Haidarali Kalubhai case [(1976) 1 SCC 889 : 1976 SCC (Cri) 211] , SCC p. 892)*

"10. Section 304-A by its own definition totally excludes the ingredients of Section 299 or Section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide. When intent or knowledge as described above is the direct motivating force of the act complained of, Section 304-A has to make room for the graver and more serious charge of culpable homicide."

36. *It is interesting to note that this judgment in Haidarali case [(1976) 1 SCC 889 : 1976 SCC (Cri) 211] had been a sheet anchor of arguments of both the learned Senior Counsel appearing for parties. They have read it differently and have tried to put different interpretations to the same.*

37. *In the latter case of Naresh Giri [(2008) 1 SCC 791 : (2008) 1 SCC (Cri) 324] it has been held in the headnote as under: (SCC pp. 791-92)*

"Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A.

Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 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 intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide."***

38. *We may profitably deal with the definition of "reckless" as defined in The Law Lexicon, which reads as under:*

*"**Reckless**.—Characterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash. Reckless conduct is much more than mere negligence: it is a gross deviation from what a reasonable person would do. (Black's Law Dictionary, 7th Edn., 1999)*

'Intention cannot exist without foresight, but foresight can exist without intention. For a man may foresee the possible or even probable consequences of his conduct and yet not desire them to occur; none the less if he persists on his course he knowingly runs the risk of bringing about the unwished result. To describe this state of mind the word "reckless" is the most appropriate. …'"

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

*"**304.Punishment for culpable homicide not amounting to murder**.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

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

This extract is taken from State v. Sanjeev Nanda, (2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2012) 3 SCC (Cri) 899 : 2012 SCC OnLine SC 582 at page 471

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

41. We are of the considered view that looking to the nature and manner in which the accident had taken place, it can safely be held that the respondent had no intention to cause death but certainly had the knowledge that his act may result in death.

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

death. Thus, in our opinion, he had committed an offence under Section 304 Part II IPC. We accordingly hold so.

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47. *In the light of the aforesaid discussion, the appeal is partly allowed. The judgment [Sanjeev Nanda v. State, (2009) 160 DLT 775] and order of conviction passed by the Delhi High Court is partly set aside and the order of conviction of the trial court is restored and upheld.* ***The accused is held guilty under Section 304 Part II IPC****. Looking to the facts and circumstances of the same, we deem it appropriate to maintain the sentence awarded by the High Court, which he has already undergone. However, we make it clear that this has been held so, looking to the very peculiar facts and features of this particular case and it may not be treated as a precedent of general proposition of law on the point, for other cases.*

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K.S.P. RADHAKRISHNAN, J. *(supplementing [**Ed.**: Deepak Verma, J. has signed this opinion as well.])—*

Section 304 Part II or Section 304-A IPC

102. *We may in the above background examine whether the offence falls under Section 304 Part II IPC or Section 304-A IPC from the facts unfolded in this case. Shri Raval, appearing for the State, as already indicated, argued that the facts of this case lead to the irresistible conclusion that it would fall under Section 304 Part II IPC. The learned counsel pointed out that the accused after having noticed that the speeding car had hit several persons, left the spot without giving any medical aid or help knowing fully well that his act was likely to cause death. The learned counsel pointed out that in any view, it would at least fall under Section 304 Part II IPC.*

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

<u>to cause death or to cause such bodily injury as is likely to cause death.</u>

114. *The principle mentioned by this Court in Alister Anthony Pareira [(2012) 2 SCC 648 : (2012) 1 SCC (Cri) 953 : (2012) 1 SCC (Civ) 848] indicates that the person must be presumed to have had the knowledge that, his act of driving the vehicle without a licence in a high speed after consuming liquor beyond the permissible limit, is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road. In our view, Alister Anthony Pareira [(2012) 2 SCC 648 : (2012) 1 SCC (Cri) 953 : (2012) 1 SCC (Civ) 848] judgment calls for no reconsideration. Assuming that Shri Ram Jethmalani is right in contending that while he was driving the vehicle in a drunken state, he had no intention or knowledge that his action was likely to cause death of six human beings, in our view, at least, immediately after having hit so many human beings and the bodies scattered around, he had the knowledge that his action was likely to cause death of so many human beings, lying on the road unattended.* ***<u>To say, still he had no knowledge about his action is too childish which no reasonable man can accept as worthy of consideration.</u>*** *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.* ***<u>The accused had sufficient knowledge that his action was likely to cause death and such an action would, in the facts and circumstances of this case, fall under Section 304 Part II IPC and the trial court has rightly held so and the High Court has committed an error in converting the offence to Section 304-A IPC.</u>***

115. *We may now examine the mitigating and aggravating circumstances and decide as to whether the punishment awarded by the High Court is commensurate with the gravity of the offence.*

116. *The mitigating circumstances suggested by the defence counsel are as follows:*

(i) The accused was only 21 years on the date of the accident, later married and has a daughter;

(ii) Prolonged trial and judicial unfairness caused prejudice;

(iii) The accused has undergone sentence of two years awarded by the High Court and, during that period, his conduct and behaviour in the jail was appreciated;

(iv) Accident occurred on a foggy day in the early hours of morning with poor visibility;

(v) The accused had no previous criminal record nor has he been involved in any criminal case subsequently;

(vi) The accused and the family members contributed and paid a compensation of Rs 65 lakhs, in total, in the year 1999 to the families of the victims;

(vii) The accused had neither the intention nor knowledge of the ultimate consequences of his action and that he was holding a driving licence from the United States.

117. *Following are, in our view, the aggravating circumstances unfolded in this case:*

(i) ***Six persons died due to the rash and negligent driving of the accused and the car was driven with the knowledge that drunken driving without licence is likely to cause death.***

(ii) Much of the delay in completing the trial could have been avoided if wisdom had dawned on the accused earlier. Only at the appellate stage the accused had admitted that it was he who was driving the vehicle on the fateful day which resulted in the death of six persons and delay in completion of the trial cannot be attributed to the prosecution as the prosecution was burdened with the task of establishing the offence beyond reasonable doubt by examining sixty-one witnesses and producing several documents including expert evidence.

(iii) The accused did not stop the vehicle in spite of the fact that the vehicle had hit six persons and one got injured and escaped from the spot without giving any helping hand to the victims who were dying and crying for help. Human lives could have been saved, if the accused had shown some mercy.

(iv) The accused had the knowledge that the car driven by him had hit the human beings and human bodies were scattered around and they might die, but he thought of only his safety and left the place, leaving their fate to destiny which, in our view, is not a normal human psychology and no court can give a stamp of approval to that conduct.

(v) Non-reporting the crime to the police even after reaching home and failure to take any steps to provide medical help even after escaping from the site.

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Sentencing

119. <u>We have to decide, after having found on facts, that this case would fall under Section 304 Part II,</u> *what will be the appropriate sentence. Generally, the policy which the court adopts while awarding sentence is that the punishment must be appropriate and proportional to the gravity of the offence committed. Law demands that the offender should be adequately punished for the crime, so that it can deter the offender and other persons from committing similar offences. Nature and circumstances of the offence; the need for the sentence imposed to reflect the seriousness of the offence; to afford adequate deterrence to the conduct and to protect the public from such crimes are certain factors to be considered while imposing the sentence.*

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121. <u>The High Court, in our view, has committed an error in converting the conviction to Section 304-A IPC from that of Section 304 Part II IPC and the conviction awarded calls for a relook on the basis of the facts already discussed, otherwise this Court will be setting a bad precedent and sending a wrong message to the public.</u> *After having found that the offence would fall under Section 304 Part II IPC, not under Section 304-A, the following sentence awarded would meet the ends of justice, in addition to the sentence already awarded by the High Court."*

(Emphasis supplied)

51. From the conspectus of the above judgments, it is evident that cases of motor vehicle accidents resulting in death are heavily fact-dependent, and the applicability of Section 304A or Section 304 Part II depends primarily upon the manner of the accident and the mental element attributable to the accused, which has to be gathered from the evidence. Keeping in mind the aforesaid principles the facts of the present case are required to be examined.

52. In the present case, ***firstly***, the Petitioner/CCL, aged 17 years 11 months 26 days, was driving his Mercedes car bearing No. DL-2FCM-3000, on the date of the incident without a valid license, at a speed of approximately 80–100 kmph, in a zone where the permissible speed limit was 50 kmph. The prosecution has also relied upon the FSL report which suggests that the speed of the offending vehicle was 90-95 Kmph.

53. *Secondly*, the other six co-occupants of the offending vehicle, have categorically stated in their statements under section 161 and 164 of the CrPC that the Petitioner/CCL was driving the vehicle at a very high speed, he has a habit of over speeding and driving his vehicle in a rash manner and despite repeated requests to drive carefully and to reduce the speed of the offending vehicle, the Petitioner/CCL did not pay heed to the warnings.

54. *Thirdly*, the eyewitnesses, namely Mr. Girish Kumar, Mr. Pradeep Satia and Mr. Narender Singh as well as Mr. Amanjeet Bhatia and Mr. Vijender Nagar have stated in their statement under section 161 of the CrPC that the offending Mercedes car bearing No. DL 2F CM 3000,

came at a very high speed of about 100 Kmph and hit the deceased/Shiddharth Sharma, who was crossing the road and consequently that person fell on the road after bouncing 15/20 feet in the air and sustained fatal injuries. The occupants of the vehicle, i.e. few boys aged between 15-18 years, de-boarded the vehicle and ran away and it was these eye-witnesses who helped the injured reached SPN Hospital.

55. *Fourthly,* it has also come on record that the Petitioner had also dodged two motor-cyclists and Mr. Amanjeet Bhatia and Mr. Vijender Nagar had a narrow escape from the offending vehicle, while was being driven at a speed of about 100 Kmph. The same is also supported by the statement of Shrey Monga, Ayush Rastogi and Sanad Goel as well.

56. *Fifthly,* the prosecution has also brought forth the previous traffic challans and traffic violations by the Petitioner/CCL, including one of over-speeding, to allege that the Petitioner was not new to driving without a license as minor and was always aware of the fatal consequences of his act of driving his vehicle at such a high speed, without having a valid driving license and requisite skills to drive the vehicle.

57. *Sixthly,* the accident has occurred at 8:45 p.m., on a busy public road at peak traffic hours and not on a secluded road or open ground where the chances of other pedestrians or vehicles on the road would be comparatively lesser.

58. *Lastly*, the prosecution has also brought on record the FSL report which *prima facie* suggests that there are no skid marks and thus, the Petitioner/CCL did not apply brakes to save the victim and the manner of accident as reflected in the CCTV footage also *prima facie* demonstrates that the manner in which the vehicle was being driven, death of a person would have been the most likely outcome.

59. Upon consideration of the material placed on record, the learned JJB formed a *prima facie* opinion that the element of "*knowledge*" that such conduct was likely to cause death is discernible, without recording any conclusive finding on culpability. The manner of the accident, coupled with the fact that the Petitioner/CCL was a minor and ineligible to hold a valid driving licence, reasonably led the Board to infer lack of requisite driving skill and awareness of the probable fatal consequences. Accordingly, it was observed that notice for the offence punishable under Section 304 Part II IPC was liable to be framed.

60. Now, whether these circumstances ultimately establish "*knowledge*" as required under section 304 part II, beyond reasonable doubt, or the same falls within the lesser offence of 304 A or 279 of the IPC, if at all, is a matter for trial and cannot be ascertained without evidence led by parties. Even the defence contentions raised that high speed or lack of driving license cannot by itself constitute "*knowledge*" as required under Section 304 part II or that the traffic signal was green, that the road was relatively empty, or that the victim may have suddenly changed direction, are matters which require

evidentiary evaluation. At this stage this Court cannot embark upon a comparative assessment of the prosecution and defence versions or conduct a detailed scrutiny of CCTV footage and the photographs.

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

62. This approach has also been endorsed in the decision of the Hon'ble Supreme Court in ***Ghulam Hassan Beigh*** *(supra)*, wherein it was observed that at the stage of framing of charge, if the material discloses ingredients of a higher offence, it would be appropriate and prudent to frame such charge, leaving it open to the trial court, upon appreciation of evidence, to alter or modify the charge in accordance with law. It was recognized that framing of a higher charge at the

initial stage does not cause prejudice to the accused, as the power to alter to a lesser charge is well preserved and conversely, omission to frame the appropriate higher charge at the outset may necessitate recommencement of proceedings if the evidence ultimately so warrants. The relevant extract is reproduced as under: -

> ***"31.*** *To put it in other words, whether the cause of death has any nexus with the alleged assault on the deceased by the accused persons could have been determined only after the recording of oral evidence of the eyewitnesses and the expert witness along with the other substantive evidence on record. The post-mortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. The doctor's statement in court is alone the substantive evidence. The post-mortem report can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness box under Section 145 of the Evidence Act, 1872. A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the court.*
>
> ***32. <u>The prosecution should have been given opportunity to prove all the relevant facts including the post-mortem report through the medical officer concerned by leading oral evidence and thereby seek the opinion of the expert. It was too early on the part of the trial court as well as the High Court to arrive at the conclusion that since no serious injuries were</u>***

noted in the post-mortem report, the death of the deceased on account of "cardio respiratory failure" cannot be said to be having any nexus with the incident in question.

33. Whether the case falls under Section 302 or 304 Part II IPC could have been decided by the trial court only after the evaluation of the entire oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. Ultimately, upon appreciation of the entire evidence on record at the end of the trial, the trial court may take one view or the other i.e. whether it is a case of murder or case of culpable homicide. But at the stage of framing of the charge, the trial court could not have reached to such a conclusion merely relying upon the post-mortem report on record. The High Court also overlooked such fundamental infirmity in the order passed by the trial court and proceeded to affirm the same.

34. *We may now proceed to consider the issue on hand from a different angle. It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court.* ***Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by the prosecution. He has only to rebut evidence bearing on the charge. The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject-matter of the charge against him. He need not cross-examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.***

35. *Once the trial court decides to discharge an accused person from the offence punishable under*

> *Section 302 IPC and proceeds to frame the lesser charge for the offence punishable under Section 304 Part II IPC, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as framed.* ***To put it otherwise, the prosecution will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302IPC in accordance with the case put up by the prosecution still it would be open for the accused to persuade the Court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under Section 304IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence whatever it is worth in accordance with its original case as put up in the charge-sheet. Such approach of the trial court at times may prove to be more rationale and prudent.***
>
> ***36.*** *In view of the aforesaid discussion, the order [Ghulam Hassan Beigh v. Mohd. Maqbool Magrey, 2020 SCC OnLine J&K 735] of the High Court as well as the order of the trial court deserve to be set aside.*
>
> ***37.*** *In the result, this appeal succeeds and is hereby allowed. The orders passed by the High Court and the trial court are hereby set aside. The trial court shall now proceed to pass a fresh order framing charge in accordance with law keeping in mind the observations made by this Court."*
>
> (Emphasis supplied)

63. Thus, in view of the aforesaid principles, where the material on record *prima facie* discloses the ingredients of Section 304 Part II IPC, this Court finds no infirmity in the impugned orders framing Notice/charge for Section 304 part II against the accused/CCL and the learned JJB can alter or modify or reduce the charge in accordance with law, after appraisal of the evidence.

64. As regards the offence under Sections 134/187 of the MV Act, the learned JJB has directed framing of notice on the basis of the prosecution material which alleges that the Petitioner, along with the other occupants of the vehicle, fled from the spot immediately after the incident, leaving the injured victim behind. The prosecution version *prima facie* attracts the ingredients of the said provisions. The contention raised on behalf of the Petitioner that he had, in fact, assisted in placing the victim in an auto-rickshaw for being taken to the hospital and that arrangements for medical treatment were subsequently made through his father constitutes a matter of defence which can only be evaluated upon appreciation of evidence.

65. Thus, without expressing any opinion on the ultimate merits of the case, this Court finds no ground warranting interference in the impugned orders.

66. It is clarified that the observations made herein are confined to the adjudication of the present revision petition and shall not be construed as expressing any conclusive finding on the merits of the case.

67. The learned JJB shall independently assess the evidence and determine the appropriate offence, in accordance with law, uninfluenced by any observation contained herein.

68. In view of the above discussion, the present petition is dismissed, along with pending application(s), if any.

AMIT MAHAJAN, J

APRIL 17, 2026
JN