State of H.P. Vs Surinder Pal Singh and etc.

Court: High Court of Himachal Pradesh

Date of Decision: May 31, 2013

Citation: (2013) CriLJ 3670 : (2013) 3 ShimLC 1356

Hon'ble Judges: Dev Darshan Sood, J

Bench: Single Bench

Advocate: Sandeep Sharma, Assistant Solicitor General of India, for the Appellant; Jagdish Vats, R.K. Bawa and R.P. Thakur, for the Respondent

Judgement

Dev Darshan Sood, J.
The appellants challenge the judgment passed by the learned Additional Sessions Judge, Fast Track Court, Shimla

acquitting the accused of offences u/s 304A, I.P.C. Two appeals arise out of the same judgment, viz. Cr. Appeal No. 170 of 2005 titled State of

H.P. v. Surinder Pal Singh and Cr. Appeal No. 97 of 2005 tided State of H.P. v. K. Shanmugham and are being disposed of by this common

judgment. According to the prosecution, on 28.5.1995, 77 students (59 boys & 18 girls) and staff members of Dalhousie Public School, Badhani

(Pathankot) (hereinafter "DPS" for short) went for a picnic on 28.5.1995 on the banks of river Beas at Tanda Patan, Indore. Both the accused

according to the prosecution had been deputed by the head master to look after and ensure the safety of the students studying in 5th and 6th

classes.

2. During lunch break, the accused entered the river and inspected the water level to ascertain whether it was safe for children. A zone was

earmarked by them where children could play. The depth of the water was up to the knee level. Both the accused were supposed to have

stationed themselves on norm and south corners of the selected zone where the children were allowed to play. Everything was fine; children started

frolicking in the water. According to the prosecution, at around 1.30 p.m., the accused proceeded down stream where the water was deep and

without examining as to whether it was safe or not, they allowed the children to enter the river as a result 14 students drowned. They were charged

for offences u/s 304A of the Indian Penal Code (hereinafter I.P.C.).

3. Twenty four witnesses were examined by the prosecution in support of its case. The learned Chief Judicial Magistrate, on the evidence,

convicted the accused holding that the proved facts squarely attracted Sec. 304A, I.P.C. The learned Magistrate relying upon the decisions in

Suleman Rehiman Mulani and Another Vs. State of Maharashtra, and Balwant Singh Vs. State of Punjab and Another, holds that the acts of the

accused were rash and negligent. He summarised his finding by holding that there was sufficient evidence adduced by the prosecution to justify the

fact that the accused had not checked the depth of, the water where they allowed children to, enter and since the children were of 4th and 5th

classes, it was the bounden duty of the accused to ensure their safety knowing fully well as to how children of this age group behave.

4. In appeal, learned appellate Court acquitted the accused holding that there was no conclusive evidence on the record that the accused were

negligent in the discharge of their duties. The learned appellate Court considered the evidence of the prosecution holding that the site was

specifically chosen and allowed by the school authorities for picnicking and earlier this site had been used by the children of this school on

7.5.1995 and there was no issue of safety. The Court then proceeds to consider the factual scenario which was that both the accused were also

accompanied by three lady teachers, who remained standing on the river banks. The evidence of PW5 Sh. Manpreet Singh, who was one of the

students, was that one of the deceased Ujjal Gurpreet had strayed into the water and the accused at that point of time had ordered the other

children not to go after him but in disobedience of this order, they entered the river resulting in the accident. The learned Court also holds that the

depth of the water had already been checked by the accused and on consideration of the totality of the evidence acquitted the accused holding no

culpable negligence attributable to them had been proved on the record.

5. Shri Sandeep Sharma, learned Assistant Solicitor General appearing for the appellant-State urges that the learned appellate Court has been

remiss in appreciating the evidence and that the appreciation by the learned trial Court is in concord with the established principles of law. Learned

Assistant Solicitor General urges that the very same set of witnesses on which the learned appellate Court relies to acquit the accused have in no

uncertain terms indicted the accused and that it is not open to the learned appellate Court to assess only selected portions of the evidence while

discarding the entirety of the statements which have to be read as a whole.

6. There is no dispute with the proposition that the evidence has to be assessed as a whole and it is not open to the Court to assess some selected

portions. The principles are by now well established in C. C. Magesh and Others etc. Vs. State of Karnataka, the Supreme Court deals with the

principles as to how evidence is to be appreciated, holding:

45 It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to

emphasize, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled

Suraj Singh Vs. State of U.P., has held (SCC p. 704, para 14) : (Para 41 of AIR (Supp.))

14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other

witnesses held to be creditworthy; the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation..

46. In a criminal trial, evidence of the eyewitness requires a careful assessment and must be evaluated for its creditability. Since the fundamental

aspect of criminal jurisprudence rests upon the stated principle that ""no man is guilty until proven so"", hence utmost caution is required to be

exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There

must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the

witnesses.

7. In Paramjeet Singh @ Pamma Vs. State of Uttarakhand, the court reiterates:

10. Standard of Proof:

A criminal trial is not a fairy tale wherein one is free to give flight to one''s imagination and fantasy. Crime is an event in real life and is the product of

interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the

court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis,

would have to depend upon its own facts. The court must bear in mind that ""human nature is too willing, when faced with brutal crimes, to spin

stories out of strong suspicions."" Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal

evidence and not on surmises and conjectures. The law does not permit the court to punish the accused on the basis of a moral conviction or

suspicion alone. ""The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond

reasonable doubt on the basis of acceptable evidence."" In fact, it is a settled principle of criminal jurisprudence that the more serious the offence,

the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was

committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the

crime induce an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide: Kashmira Singh Vs. State of Madhya

Pradesh, The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh, Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, Mousam

Singha Roy and Others Vs. State of West Bengal, and Aloke Nath Dutta and Others Vs. State of West Bengal,

8. In R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, the principles of appreciation of evidence have

been established as:

28. Whether a civil or a criminal case, the anvil for testing of ''proved'', ''disproved'' and ''not proved'', as defined in Section 3 of the Indian

Evidence Act, 1872 is one and the same. A fact is said to be ''proved'' when, if considering the matters before it, the Court either believes it to

exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that

it exists. It is the evaluation of the result drawn by applicability of the rule, which makes the difference.

The probative effects of evidence in civil and criminal cases are not however always the same and it has been laid down that a fact may be

regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case. BEST

says: There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of

probability, due regard being had to the burden of proof, is a sufficient basis of decision: but in the latter, especially when the offence charged

amounts to treason or felony, a much higher degree of assurance is required. (BEST, S. 95). While civil cases may be proved by a mere

preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt. (See Sarkar on Evidence, 15th

Edition, pp. 58-59)

In the words of Denning LJ (Bater v. B, 1950-2 All ER 458, 459):

It is true that by our law there is a higher standard of proof in criminal cases then in civil cases, but this is subject to the qualification that there is no

absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within

that standard. So also in civil cases there may be degrees of probability.

Agreeing with this statement of law, Hodson, LJ said:

Just as in civil cases the balance of probability may be more readily fitted in one case than in another, so in criminal cases proof beyond reasonable

doubt may more readily be attained in some cases than in others. (Hornal V. Neuberger P. Ltd., 1956-3 All ER 970, 977).

9. I find that this principle was the bedrock which had to be followed by the learned courts below.

10. Adverting to the principles applicable for adjudicating culpable criminal negligence, in Mahadev Prasad Kaushik Vs. State of U.P. and

Another, the Court holds:

23. Section 304A was inserted by the Indian Penal Code (Amendment) Act, 1870 (Act XXVII 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 304A. Section 304A 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 u/s 300, IPC. In other words, Section 304A 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 304A will have to make room for the grayer 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 v. Idu Beg (1881) ILR 3 All 776, Straight, J. made the following pertinent observations which have been quoted with approval by

various Courts including this Court;

...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....

11. In Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Jaspal Singh and Others, the Court holds:

12. The learned counsel for PGI would submit that Smt. Harjit Kaur died due to bum injuries and the other connected reasons arising out of said

injury and not due to mismatched blood transfusion and, therefore, no negligence can be attributed to the hospital and the attending doctors. He

relied upon two decisions of this Court namely (i) Jacob Mathew Vs. State of Punjab and Another, and (ii) Martin F. D''Souza Vs. Mohd. Ishfaq,

13. The term negligence is often used in the sense of careless conduct. Way back in 1866 in Grill v. General Iron Screw Collier Co., 1866 LR 1

CP 600 at 612, Wills J. referred to negligence as:

...the absence of such care as it was the duty of the defendant to use.

Browen L.J. in Thomas v. Quatermaine (1887) 18 QBD 6854 stated, ""...idea of negligence and duty are strictly correlative, and there is no such

thing as negligence in the abstract; negligence is simply neglect of some care which we are bound by law to exercise towards somebody.

14. In M Alister (or Donoghue) V. Stevenson, 1932 A.C. 562 Lord Macmillan with regard to negligence made the following classic statement:

The law takes no cognizance of carelessness in the abstract. It concerns itself with carelessness only where there is a duty to take care and where

failure in that duty has caused damage. In such circumstances carelessness assumes the legal quality of negligence and entails the consequences in

law of negligence. The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care, and that

the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty.

15. In Jacob Mathew this Court while dealing with negligence as tort referred to the Law of Torts, Ratanlal and Dhirajlal, (24th Edn., 2002 edited

by Justice G.P. Singh) and noticed thus:

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which

ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable

negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary

care and skill, by which neglect the plaintiff has suffered injury to his person or property.... the definition involves three constituents of negligence:

(1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former"s conduct within the scope

of the duty; (2) breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs; for,

damage is a necessary ingredient of this tort.

16. Insofar as civil law is concerned, the term negligence is used for the purpose of fastening the defendant with liability of the amount of damages.

To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law.

17. In Syad Akbar Vs. State of Karnataka, , this Court dealt with in details the distinction between negligence in civil law and in criminal law. It has

been held that there is a marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a

mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal

proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all

reasonable doubt.

(Emphasis supplied)

12. I may also refer to the earlier decision of the Supreme Court in Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra, On the

interpretation of Section 304A, holding:

4. We may in this connection refer to Emperor v. Omkar Rampratap, 4 Bom LR 679, where Sir Lawrence Jenkins had to interpret S. 304A and

observed as follows:

To impose criminal liability u/s 304A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act

of the accused, and that act must be the proximate and efficient cause without the intervention of another"s negligence. It must be the causa

causans; it is not enough that it may have been the causa sine qua non.

This view has been generally followed by High Courts in India and is in our opinion the right view to take of the meaning of S. 304A. It is not

necessary to refer to other decisions, for as we have already said this view has been generally accepted. Therefore, the mere fact that the fire

would not have taken place if the appellant had not allowed burners to be put in the same room in which turpentine and varnish were stored, would

not be enough to make him liable under S. 304A, for the fire would not have taken place, with the result that seven persons were burnt to death,

without the negligence of Hatim. The death in this case was, therefore, in our opinion not directly the result of a rash or negligent act on the part of

the appellant and was not the proximate and efficient cause without the intervention of another''s negligence. The appellant must, therefore, be

acquitted of the offence under S. 304A.

13. Subsequently in Ambalal D. Bhatt Vs. The State of Gujarat, these principles were reiterated holding:

8. It appears to us that in a prosecution for an offence u/s 304A, the mere fact that an accused contravenes certain rules or regulations in the doing

of an act which causes death of another, does not establish that the death was the result of a rash or negligent act or that any such act was the

proximate and efficient cause of the death. If that were so, the acquittal of the appellant for contravention of the provisions of the Act and the Rules

would itself have been an answer and we would have been then examined to what extent additional evidence of his acquittal would have to be

allowed, but since that is not the criteria, we have to determine whether the appellant''s act in giving only one batch number to all the four lots

manufactured on 12-11-62 in preparing batch No. 211105 was the cause of deaths and whether those deaths were a direct consequence of the

appellant''s act that is, whether the appellant''s act is the direct result of a rash and negligent act and that act was the proximate and efficient cause

without the intervention of another''s negligence. As observed by Sir Lawrence Jenkins in Emperor v. Omkar Rampratap (1902) 4 Bom LR 679

the act causing the deaths ""must be the causa causans; it is not enough that it may have been the causa sine qua non"". This view has been adopted

by this Court in several decisions. In Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra, the accused who had manufactured wet

paints without a licence was acquitted of the charge u/s 304A because it was held that the mere fact that he allowed the burners to be used in the

same room in which varnish and turpentine were stored, even though it would be a negligent act, would not be enough to make the accused

responsible for the fire which broke out. The cause of the fire was not merely the presence of the burners within the room in which varnish and

turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out, but was also due to the overflowing of

froth out of the barrels. In Suleman Rehiman Mulani and Another Vs. State of Maharashtra, the accused who was driving a car only with a

learner''s licence without a trainer by his side, had injured a person. It was held that by itself was no sufficient to warrant a conviction u/s 304A. It

would be different if it can be established as in the case of Bhalchandra alias Bapu and Another Vs. State of Maharashtra, that deaths and injuries

caused by the contravention of a prohibition in respect of the substances which are highly dangerous as in the case of explosives in a cracker

factory which are considered to be of a highly hazardous and dangerous nature having sensitive composition where even friction or percussion

could cause an explosion, that contravention would be the causa causans.

14. In Ashish Batham Vs. State of Madhya Pradesh, the Supreme Court affirms the principle for adjudicating criminal liability thus:

8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence

of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence,

the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in

which it was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof

required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts

dealing with criminal cases at least should constantly remember that there is a long mental distance between ''may be true'' and ''must be true'' and

this basic and golden rule only helps to maintain the vital distinction between ''conjectures'' and ''sure conclusions'' to be arrived at on the

touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality

and credibility of the evidence brought on record.

15. To similar effect is the principles affirmed in Sanjiv Kumar v. State of Punjab (2009) 16 SCC 487, holding:

20. We cannot lose sight of the principle that while the prosecution has to prove its case beyond reasonable doubt, the defence of the accused has

to be tested on the touchstone of probability. The burden of proof lies on the prosecution in all criminal trials, though the onus may shift to the

accused in given circumstances, and if so provided by law. Therefore, the evidence has to be appreciated to find out whether the defence set up by

the appellant is probable and true.

16. I need not multiply precedent any further. It is in the backdrop of this law that the case of the prosecution has to be considered.

17. The distinction between rash and negligent act has been considered by the Supreme Court in Bhalachandra Waman Pathe Vs. The State of

Maharashtra holding:

11. An offence u/s 304A, Indian Penal Code may be committed either by doing a rash act or a negligent act. There is a distinction between a rash

act and a negligent act. In the case of a rash act as observed by Straight, J. in Idu Beg''s case 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. Negligence is an

omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would

do, or doing something which a prudent and reasonable man would not do. Again as explained in Nidamarti Negaghushanam''s case, a 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. 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 if he had he would have had the consciousness. The imputability

arises from the neglect of the civic duty of circumspection.

12. As between rashness and negligence, rashness is undoubtedly a graver offence....

18. So also in Mohammed Aynuddin @ Miyam Vs. State of Andhra Pradesh, , the Court holds:

9. A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done

without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the

consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the

public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and

precaution.

19. To similar effect is the decision in Rathnashalvan Vs. State of Karnataka, holding:

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 In Re: Nidamarti Nagabhushanam vs.

20. It is these settled principles which govern the case and evaluation of the evidence on record. Adverting to the evidence of PW1 Jaspreet Singh,

he states that he was teaching 6th class in Dalhousie Public School when the incident took place. The management of the school had arranged for

picnic on 28.5.1995. A batch of 77 students (59 boys and 18 girls) has gone there under supervision of the accused and lady teachers Ms.

Tajender, Ms. Anita and Smt. Kalpana. They reached the picnic spot at around 11.30/11.45 a.m. and started playing there. The students were

divided into six groups. There was one leader of one group. Before lunch, the children played in the water and castable (sic) by both accused on

either side. The children entered the water (including the teachers who started playing there). Lunch was served at around 1.30 p.m. and after

some rest, he asked the teachers as to whether they would go for boating. The girls were sent in order of priority and thereafter the students of 5th

Class. While the children were waiting for their turn to go boating, both the accused said that they could play one game of ""catch catch"" but before

that ""Unhonay Kaha ki pahalay hum panni ki gehrai check kartay hai"". (They said that first they will check the depth of the water). PW10 Sh.

Varun Sharma, who is one of the students, had told them that he was an expert swimmer as such, he was allowed to accompany them. The

children accompanied Sh. Varun Sharma after some distance and he (this witness) followed them. When they were walking along with "D.P. Sir"

(accused-Surinder Pal Singh), the water reached till the level of his neck. He came out of the water and after that he heard sounds of ""Bachao

Bachao"" and he saw that the children with the ''D.P. Sir'' were drowning. At this, accused Shanmugham called out to the driver for help. In cross-

examination he says that when the incident of drowning occurred the game had already been in progress for about 15 minutes and they had gone

into down stream 15/16 metres. ''D.P. Sir'' started rescuing the children the moment he found that they were unable to cope with the water. In

cross-examination, he admits that before playing the game ""catch catch"", the depth of the water was checked. "" Yeha thik hai ki doshi number aaik

nay catch up walli game khelanay say pahalay panni ki geharai check up ki thee"". (It is correct that before playing the game of catch up, the first

accused had checked the depth of the water).

21. Adverting to the statement of PW10 Sh. Varun Sharma, he states in examination-in-chief about the picnic being organized and that before

lunch both ''D.P. Sir'' and the 2nd accused had gone to check the water level/depth. He then states that the children were divided into groups. He

admits that after checking the water level, ''D.P. Sir'' had fixed the point and asked the children not to proceed beyond that. PW3 Smt. Kalpana

Sharma has not stated a single word about the negligence on the part of the accused. PW5 Manpreet Singh stated that the level of the water had

been checked and only after that they were allowed to enter the water. He also states that at one point of time, the accused has said that nobody

should follow him.

22. On the totality of the evidence on record which comprised on the statements of PW8 Sh. Sumit Mahajan, PW9 Sh. Sourav Sharma, PW10

Sh. Varun Sharma, PW12 Sh. Ankur Sharma, PW14 Ranbir Singh, PW15 Sh. Jasbir Singh and PW16 Sh. Arpan Verma, the learned appellate

Court assesses that nothing has been stated by these witnesses about the recklessness/criminal rashness of the accused in permitting the children to

enter uncharted water.

23. I also note from the evidence of PW2 Sh. R. Kenedy Principal of the school that prior to the present picnic, which ended up in disaster, on

7.5.1995 he had himself accompanied the children to the same very spot and was frolicking with the children in the water. In other words, it was

not an uncharted spot which was per se dangerous for the children to play in the water. In these circumstances, it becomes difficult to hold mat the

children were deliberately led to a spot which was dangerous. The learned trial court should and ought to have considered the fact that if the

accused had entered in untested water, the accused themselves were also risking their lives. On a combined reading of the evidence on record, it is

clear that the level of the water was checked before lunch as also after lunch when the game of ""catch catch"" was played. There is nothing on the

record to show that after lunch the level of the water suddenly rose which made it extremely dangerous to enter the water. In these circumstances,

it becomes difficult to hold that the accused had the mens rea or were guilty of culpable negligence. It is unfortunate that on an occasion for joy and

fun had turned into a ghastly tragedy but that emotive response would not be per se sufficient to convict the accused.

24. Sh. Sandeep Sharma, learned Assistant Solicitor General has urged that the learned trial Court has correctly appreciated the evidence and in

this view of the matter the learned appellate Court was in grave error in acquitting the accused. He submits that they were young children who

could not be allowed to enter the water which act by itself was per se sufficient to attribute criminal negligence to the accused. I do not find that the

learned trial Court has paid any attention to the fact situation and has been swayed simply by the fact that some school children have died. The

learned trial Court holds that the statement of PW10 Varun Sharma that the depth of the water was checked after lunch does not inspire

confidence which fact I do not find established on the record. He also discards the evidence of PW1 Sh. Jaspreet Singh and PW10 Sh. Varun

Sharma. He ignores the statement of PW2 Sh. R. Kenedy, Principal of the school. I do not find that the learned trial Court has applied the

established principles for appreciation of evidence. The findings are tentative. Surely, when the level of water had been checked before lunch there

was no reason as to why it should not have been checked post lunch. There is also no reason to discard the statements of these two witnesses,

who stated that such level was in fact checked when the game commenced. He also rejects the sub-mission made on behalf of other accused K.

Shanmugham that the boys were divided into groups and no children from his group had drowned.'' After holding that the children were, in fact,

divided in groups, he simply set aside the submission by holding that he (accused) was responsible for the act by omission. Surely, if this is the logic

used by the learned Judge, then the other teachers present there would also be guilty for the acts. I do not find that the evidence of PW2 Sh. R.

Kenedy Head Master implicates the accused. When read as a whole, this very Head Master had organized the picnic at the spot with the other

children on previous date 7.5.1995 and had played with them in the water. The principles applied for appreciation of evidence have not been

properly considered by the learned trial Judge. His finding that on the second occasion the children had been taken to the depth of water which

was more than that of the morning cannot be accepted. On the second aspect, all that I need to say is that the act of entering in the water by itself

is per se not sufficient to attract criminal liability u/s 304A. In the cases considered (supra), it has been held that the ingredients have to be

established beyond reasonable doubt before any punishment is imposed. On the appreciation of evidence, learned Assistant Solicitor General

refers to the decision in Sucha Singh and Another Vs. State of Punjab, to urge that exaggerated devotion to the rule of benefit of doubt cannot be

invoked. On the established facts I do not find this to be the actual situation as even the basic facts have not been proved. There is no exaggerated

emphasis on acquittal. On the principles as considered by me, I hold that the prosecution has not been able to prove its case. In these

circumstances, there is no merit in this appeal which is accordingly dismissed. Bail bonds furnished by the respondents are discharged. This

judgment has no bearing on any civil claim of the victims but considers only criminal liability.