

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 381 of 2019****With****R/CRIMINAL REVISION APPLICATION NO. 382 of 2019****With****R/CRIMINAL REVISION APPLICATION NO. 383 of 2019****With****R/CRIMINAL REVISION APPLICATION NO. 479 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR Sd/-**

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|------------------------|-----|----|
| Approved for Reporting | Yes | No |
| | -- | No |

ANILKUMAR CHIMANLAL DIXIT & ORS.**Versus****STATE OF GUJARAT****Appearance:****MR JS UNWALA, Senior Advocate with MS TEJAL A VASHI(2704) for the
Applicant(s) No. 1,2,3,4****MR ROHAN RAVAL, APP for the Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 05/05/2026****JUDGMENT**

1. Rule. Learned APP waives service of notice of rule on behalf of the respondent-State in all these matters. With the consent of the parties, all these matters are taken up for final hearing today and are being disposed of by this common judgment.

2. By filing these revision applications, the applicants have prayed to quash and set aside order dated 25.3.2019 passed below Exh.52, Exh.54, Exh.55 & Exh.59 by learned Additional (ad-hoc) Sessions Judge, Vyara-Tapi in Sessions Case No.48 of

2011 and further be pleased to direct discharge of the petitioners in terms of Section 227 of the Code of Criminal Procedure, 1973.

3. The facts of the case are that a complaint was filed at the Vyara Police Station under Sections 304, 337, 338, read with 114 of the IPC (C.R.No. 80 of 2010), following the death and injuries sustained by girls at the Government Girls' Hostel when a portion of the staircase collapsed on 26.01.2007. The applicants were serving as engineers in the R&B Department at Surat during the construction period of the said staircase. It is alleged that 11 girls were crushed under the debris of staircase. It is alleged that due to inferior quality materials used in construction, the accident occurred and 11 girls have lost their lives, which led to filing of the complaint. Therefore, the applicants-accused filed for discharge on the grounds that there was no negligence on their part and no offense under Sections 304, 337, 338, or 114 of IPC is made out, which came to be rejected by the impugned orders, therefore, the applicants have filed present revision applications.

4. Heard Mr.Jal Unwala, learned Senior Counsel appearing with Ms.Tejal Vashi, learned advocate for the applicants-accused and Mr.Rohan Raval, learned APP for the respondent-State.

5. Mr.Unwala, learned Senior Counsel appearing for the applicants submitted that construction started in 1989 and

ended in 1994. The incident occurred in 2007, i.e. approximately after 18 years from the start of the work. He further submitted that even during the unfortunate incident, the building structure remained intact and only the staircase collapsed. He submitted that 95% structure of the building is as it is. He further submitted that, at the relevant time, the accused were not rendering their services at the site in question and there was no negligence on the part of the applicant in construction of the building. He also submitted that there was no negligence nor there was use of inferior quality materials, in view of the fact that the building survived even during 2001 earthquake. He further submitted that passage of time and weather changes affect the structures of the building and the quality might have deteriorated over a long period due to weather changes. He further submitted that the applicants had no *mens rea* and they had no knowledge or intention that such an unfortunate incident may happen. He further submitted that as per the settled legal position, when two views are possible, the Court must discharge the accused. In this regard he has referred to the decision in the case of Yogesh alias Sachin Jagdish Joshi Vs State of Maharashtra, reported in **2008(2) GLH 596** (SC).

6. Making above submissions, he prayed that these revision applications may be allowed by discharging the accused from the charges levelled against them.

7. On the other hand, learned APP has opposed these applications on the ground that at the relevant point of time,

all the applicants were serving as PWD engineers. They were required to perform their work according to the hostel's design but they were negligent and they have carried out the construction work by ignoring building codes and structural designs, specifically the load-bearing system. He also submitted that inferior quality bricks and materials were used. He submitted that the Investigating Officer has collected evidence from the Gujarat Engineering Research Institute (GERI), which took samples of concrete chunk, steel rods, cement mortar, bricks and concrete core, which are found to be of inferior quality. He further submitted that due to lack of supervision and negligence, the incident in question had occurred and 11 innocent girls have lost their lives. He further submitted that the accused must stand to trial to determine if an offence under Section 304 or 304-A is made out or not. He submitted that this is a matter of evidence and, therefore, present applications may not be entertained and these applications may be dismissed.

8. Having heard learned advocates for both sides and perusing the material on record, it appears that the staircase of the girls' hostel building in Vyara has collapsed, during which 11 girls have lost their lives. As per the case of the prosecution, there were structural defects and inferior quality material was used and there was lack of supervision. The building was completed in 1994, when the applicants were serving as engineers in the R&B Department. It is found that only the staircase collapsed and the rest of the building is intact. So far as Section 304 of IPC is concerned, the

investigation shows that the applicants were negligent in following building codes and in supervising the building material and the work. Therefore, as to whether the offence under Section 304 or 304-A of IPC is made out, is the moot question which remains to be answered.

9. The staircase of the girls hostel building collapsed 13 years after completion of its work. It is found that the building has survived the 2001 earthquake. Therefore, this Court has to find out whether there was any intention or knowledge on the part of the applicants is required to be decided.

10. Before proceeding further, it would be apt to refer to relevant provisions of law, which are quoted hereunder:-

“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.”

“304A. Causing death by negligence. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished

with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

11. 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).

12. There is a 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 under [Section 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 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.

13. 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".

14. In this regard, reference may be made to the decision in the case of **Mahadev Prasad Kaushik vs. State of Uttar Pradesh** reported in **(2008) 14 SCC 479**.

15. In cases of accidents, the law does not permit a presumption of negligence and negligent act on the part of the accused. However, as per Section 304, in absence of knowledge or intention, culpable homicide does not amount to murder. In absence of any intention or knowledge on the part of the accused persons, provisions of Section 304 cannot be attracted. There is a difference between the rash and negligent act and culpable homicide. If we accept the case of the prosecution as it is, and evidence collected during investigation, it reveals that the applicant-accused remained

negligent and did not take due care in maintaining the standard of construction work at the relevant point of time. It reveals from the investigation papers and the findings of the learned Sessions Judge that allegations against the applicants are of using inferior quality material and lack of supervision and load-bearing design was not prepared and such design was not approved by the concerned authority. Even if these allegations are accepted as it is, it may be termed as “negligence” on the part of the accused. It is also alleged that the Principal of the hostel had addressed one letter dated 30.12.2006 for repair and maintenance of staircase, and the the accused did not act upon that letter. Therefore, it may be considered as negligence on the part of the accused and due to improper load-bearing design, the incident has occurred. The person, who has prepared design, has not sought any opinion for the said design. The load-bearing structure was also not properly fixed and cement mortar was not properly applied. Cement mixing was not properly done and simple steel bars were used. If we consider all these facts, such defects can be termed as “negligence” on the part of the accused, but it does not constitute any intention or knowledge about the alleged incident, more particularly, when the superstructure is is still standing as it is and only staircase has collapsed. If the case of the prosecution is accepted as it is, this Court is of the opinion that in absence of intention or knowledge, no offence under Section 304 is made out, however, an offence under Section 304-A is made out.

16. So far as question relating to the applicability of Section 304-A. At the relevant point of time, the applicants were serving as Executive Engineers and Engineers and they have to perform their duty and if material collected during the investigation is accepted as it is, for negligence or the rashness on the part of applicants accused, it may lead to the proceedings under Section 304-A, in absence of any knowledge or intention to cause death. So far as other Sections are concerned, nexus of alleged incident and injury is *prima facie* revealed from the investigation papers and this Court is of considered view that the process for an offence punishable under Section 304 IPC is ill-conceived in the peculiar facts of the case on hand as present applicants could only be put on the trial under Section 304-A of IPC.

17. So far as offence under other provisions i.e. Sections 337, 338 and 114 of IPC are concerned, involvement of the accused *prima facie* cannot be ruled out considering the material available on record.

18. In the backdrop of above discussion, the discharge application filed by the present applicants-accused deserves consideration. The object of the discharge mechanism occupy a crucial position within the judicial process. It serves as a preliminary judicial filter that operates before the formal commencement of the trial. Its primary purpose is to ensure that the only cases supported by legal foundation proceed to trial, whereby upholding fairness for the accused, while preserving the judicial efficiency. It protects the individual from

being forced into the rigors of full criminal trial, when the prosecution material does not disclose even *prima facie* case. This mechanism is essential to uphold the constitutional values of personal liberty and constitutional safeguards, which prevents the wastage of the judicial time and maintains balance between the prosecution and the defence to eliminate frivolous prosecution at the early stage. Discharge mechanism enhances the public confidence in the judicial system.

19. Resultantly, these revision applications are partly allowed. The applicants-accused are discharged from the charge of offence under Section 304 of IPC, however, the applicants-accused must stand to trial for the offence punishable under Section 304-A of IPC read with Sections 337, 338, and 114 of IPC. Rule is made absolute to aforesaid extent. Interim relief granted earlier stands vacated.

20. Since the applicants are discharged from the offence under Section 304 of IPC, the learned Sessions Judge is directed to return the record to the Court of competent jurisdiction to proceed further under Section 304-A of IPC. It is clarified that these reasons are tentative in nature and this Court has not entered into the merits of the matter or allegations and the counter-allegations leveled by respective parties.

R.S. MALEK

Sd/-
(HASMUKH D. SUTHAR,J)