IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 7TH DAY OF JULY 2022 / 16TH ASHADHA, 1944

CRL.A NO. 1557 OF 2007

AGAINST THE JUDGMENT DATED 20.08.2007 IN SC 187/2004 OF ADDITIONAL SESSIONS COURT (ADHOC)-II, THODUPUZHA

APPELLANTS/ACCUSED:

1 MARTIN @ JINU SEBASTIAN
S/O.SEBASTIAN, NELLICKAL VEEDU,, ARAKKULAM PANCHAYATH, IV/326,, KULAMAVU KARA, IDUKKI VILLAGE.

2 ANIL SEBASTIAN, S/O.SEBASTIAN
NELLICKAL VEEDU, ARAKKULAM PANCHAYATH, IV/326, KULAMAVU KARA, IDUKKI VILLAGE.

BY ADVS.
SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

SENIOR GOVERNMENT PLEADER SRI.DENNY DEVASSY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.06.2022, THE COURT ON 07.07.2022 DELIVERED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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Crl.Appeal No.1557 of 2007

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Dated this the 7th day of June, 2022

J U D G M E N T

This is an appeal filed under Section 378 of the Code of Criminal Procedure assailing conviction and sentence imposed under Section 304 Part II r/w 34 of I.P.C against the appellants in S.C.No.187/2004 on the file of the Additional Sessions Judge-II, Thodupuzha as per judgment dated 20.08.2007. The respondent herein is the State of Kerala.

2. Heard Smt.Santhi Prem, the learned counsel appearing for the appellants as well as the learned Public Prosecutor appearing for the State of Kerala.

3. The prosecution case: The prosecution case is that accused No.1, who had deformity on his left wrist and who did not have proper and valid driving licence, had driven bus by name Chackochi, bearing Reg.No.KL-8A 6789, from Mamalakkandam to Kothamangalam on 29.12.2002 with the knowledge that if he drives the vehicle, the same would likely to cause an accident and fatal consequences. It is alleged further that when the above bus driven by the 1st accused reached at Second Mile, Neriyamangalam-Munnar National Highway, at 7.45 a.m, the bus hit on a culvert on the right side of the road and fell to the depth (swire) on the other side of the road, thereby 5 persons travelled in the bus died and 63 passengers were seriously injured. The prosecution allegation further is that the 2nd accused, who is the brother of the 1st accused and the owner of the bus, authorised the 1st accused, who is having disability and deformity on his left hand, to move the same freely and who did not have driving licence to

drive a heavy vehicle, with the knowledge that authorising such a person to drive the vehicle would likely to cause accident and fatal consequences. Thus prosecution case is that both the accused with common intention, committed offence under Section 304 Part II r/w 34 of I.P.C.

4. On the above facts, crime No.387/2002 was registered by Adimali Police Station on the allegation that accused 1 and 2 with common intention caused death of 5 persons and, thereby, accused Nos.1 and 2 committed the above offence.

5. The Dy.S.P, Mannar, investigated the crime and laid charge before the Magistrate Court accordingly. Then the case was committed to the Court of Sessions, Thodupuzha. After complying the legal formalities, the learned Additional Sessions Judge framed charge under Section 304 r/w 34 of I.P.C and recorded the evidence.

6. During trial, PW1 to PW37 were examined and Exts.P1

to P69 were marked on the side of the prosecution. After having examined the accused under Section 313 of Cr.P.C, the accused were given opportunity to adduce evidence and thereafter DW1 examined and Exts.D1 and D1(a) were marked on the side of the defence.

7. After hearing both sides, the learned Sub Judge found that accused 1 and 2 committed offence punishable under Section part II of Section 304 of I.P.C r/w 34 of I.P.C and thereby sentenced them to undergo rigorous imprisonment for a period of 5 years and set off was given to the 1st accused for the period he was in judicial custody in connection with the crime.

8. The above conviction and sentence are under challenge in this appeal. The learned counsel for the appellants would urge that the finding of the trial court that the appellants herein committed offence under Section 304 Part II r/w 34 of I.P.C is wrong and the prosecution failed to prove any offence committed

by the accused and even otherwise the conviction should have been for the offence under Section 304A of I.P.C. Therefore, the learned counsel pressed for acquittal of the accused or else conversion of the conviction and sentence under Section 304A of I.P.C.

9. Whereas the learned Public Prosecutor vehemently opposed the said contention and it is submitted by the learned Public Prosecutor that in this case the 2nd accused, who is the owner of the bus authorised his brother, the 1st accused, who had deformity on his left hand and who did not possess a valid and proper driving licence to drive a heavy vehicle and in consequence thereof, the 1st accused driven the bus and the same resulted in death of 5 persons and serious injuries to 63 persons. Therefore, the knowledge contemplated under Section 304 Part II r/w 34 of I.P.C is well attracted on the part of accused Nos.1 and 2 since the witnesses given evidence to the effect that the high speed of the vehicle had resulted in the accident. He also submitted that though

Exts.D1 licence and D1(a) badge were tendered in evidence through DW1, the same were found to be forged. Therefore, the finding of the learned Additional Sessions Judge does not require any interference.

10. The crucial questions to be decided are :

(i) Whether the prosecution established commission of offence under Section 304 part II r/w 34 of I.P.C by accused Nos.1 and 2/appellants?

(ii) Whether the conviction and sentence are justified by the available evidence? and

(iii) Whether this is a case where offence under Section 304A of I.P.C alone is committed by the accused?

11. In this case the court below analysed the evidence meticulously. The occurrence witnesses are PW14 to PW24. PW14 is none other than the cleaner of the bus at the time of the accident. He deposed that at the time of accident, the 1st accused Jinu was the driver of the bus. Aji (PW16) was the conductor. The owner of the vehicle was the 2nd accused. There was a bend on the

left wrist of the 1st accused. The occurrence was at 8.10 a.m before 4 years. (deposition was given on 04.06.2007). The bus was going from Mamalakkandam to Kothamangalam and he was the backdoor cleaner of the bus. The bus was driven in overspeed. There was a culvert and slope at Second Mile and the bus hit against the culvert and capsized into depth. He also sustained head injuries and 5 persons died in this occurrence. During cross examination, he had given evidence that the bus was driven by another driver before one month and the 1st accused started to drive the vehicle thereafter. Though he was cross examined at length, nothing extracted to disbelieve the evidence of PW14.

12. PW15 is none other than the front door cleaner of the bus at the time of accident. He also deposed about the occurrence and stated that the 1st accused was the driver of the bus and the 2nd accused was the owner of the bus at the time of the accident. The accused informed him that there was steel on his wrist. He was

declared hostile by the prosecution. During questioning after declaring him hostile, he conceded that the statement given to the police to the effect that Jinu driven the bus in high speed and Jinu had deformity on his left hand is true. Thus it appears that PW14, the back door cleaner fully supported the prosecution and PW15, the front door conductor, though not fully supported the prosecution, he also partly supported the prosecution as regards the occurrence. PW16 is the conductor of the bus and he also witnessed the occurrence. He also supported the evidence of PW14 in all respect. That apart, his evidence is that the 1st accused driven the vehicle in over speed. PW17 is the driver of Archana bus. His evidence is that while he was driving Archana bus following the bus (Chackochi) driven by the 1st accused, Chackochi bus capsized. He also given evidence that the bus was driven by the 1st accused and the 1st accused had a bend on his left wrist, and, therefore, the 1st accused could not drive the bus properly. He had given

evidence that in order to increase and decrease the speed of the vehicle and to adjust the steering properly, the deformity of the left wrist would be a hurdle. During cross examination, nothing extracted to disbelieve the evidence of PW17. PW18, PW19, PW20, PW21, PW22, PW23 and PW24, being travellers of the said bus, fully supported the evidence given by PW14, PW16 and PW17 in the above line.

13. When the knowledge contemplated under Section 304 Part II is concerned, the specific case of the prosecution is that the 1st accused, who did not possess a valid driving licence to drive the vehicle and who is incompetent to drive a transport vehicle, driven the vehicle with knowledge that if he drives the vehicle, the same would likely to cause death of a person or persons. The prosecution case further is that the 2nd accused, the owner of the bus, who is none other than the brother of the 1st accused residing at the same house and having knowledge about the deformity of the

left wrist of the 1st accused and knowledge that the 1st accused did not possess valid driving licence, had entrusted the vehicle to the 1st accused with knowledge that if the 1st accused drives the vehicle, the same would likely to cause death of a person or persons. In this regard, apart from the evidence of occurrence witnesses, the crucial evidence is confined to the evidence of PW9, Ext.P6, PW32 and Ext.P44 and DW1. PW32 is the consultant Orthopaedic Surgeon, Medical Mission Hospital, Kolencherry. He deposed that the 1st accused, who was admitted at the hospital, was discharged on 1.1.2003. The discharge summary would go to show that there was old fracture of right femur and residual deformity left fore-arm medial border. PW32 clarified that residual deformity means an older healed malunited fracture.

14. PW32, who had issued Ext.P44 wound certificate in relation to the 1st accused, deposed about admission of the 1st accused at Medical Mission Hospital, Kolencherry on 29.12.2002

at 10.30 a.m and he deposed at length in relation to the 5 injuries sustained by the 1st accused. Thus it has been categorically established by the above evidence that the 1st accused is a person having residual deformity on his left fore-arm medial border due to old healed malunited fracture. As far as the deformity and disability of the 1st accused is concerned, the vital evidence was given by PW29, who is none other than the Assistant Orthopaedic Surgeon, Community Health Centre, Adimali. PW29 given evidence that on 01.01.2003, Ext.P46 X-ray of the left fore-arm and wrist of the 1st accused was taken and accordingly he had issued Ext.P45 certificate for the same. His evidence is that on clinical and radiological examination it was found that the 1st accused had an old malunited fracture dislocation on left wrist joint. Further he had deposed that because of the same, the 1st accused was physically handicapped. According to PW29, the 1st accused had limitation on left wrist joint movement. So he could

not use his left fore-arm and hand properly. To a question, PW1 answered that the 1st accused could not drive a heavy vehicle properly. He had given categorical evidence further that the 1st accused could not use his left hand properly and it was difficult to control steering wheel of the vehicle properly with the disability. PW29 during further examination given evidence that the disability of the 1st accused would come to 40% as per Mc Brides scale. Thus by the evidence of PW29 and as per Ext.P45, it has been categorically established that the left fore-arm and hand of the 1st accused could not be moved freely and properly so as to drive a heavy vehicle.

15. It is relevant to note that though the prosecution alleged that the 1st accused did not have a valid driving licence at the time of accident, during defence evidence the 1st accused produced Exts.D1 driving licence and D1(a) badge alleged to be issued by Assistant Licencing Authority, Chenkalpetta and examined DW1,

Assistant Licensing Authority, Chenkalpetta. DW1 categorically deposed that Exts.D1 and D1(a) were not issued by the Assistant Licensing Authority, Chenkalpetta and he also deposed that starting from 1999 onwards, ATM card type licences had been issued from the said office, in which photograph of the applicant taken with the help of a camera would be imprinted.

16. It was rightly observed by the trial court that in Exts.D1 and D1(a), photo was manually pasted. Ext.D1 was in the form of a book; whereas the evidence of DW1 was that no such licence was issued after 1999. Ext.P68 is the sheet showing licence issued on 11.10.1999 to a large number of persons. The same did not suggest that licence was issued in the name of the 1st accused, as Ext.D1. Thus, it has been categorically established by the evidence of DW1 that Ext.D1 licence and D1(a) badge produced by the accused alleged to be issued by the Assistant Licencing Authority, Chenkalpetta.

17. Going by the evidence of DW1, 2 vital aspects were established. The first one is that the 1st accused not obtained driving licence or badge to drive the bus at the time of accident. The second one is that the 1st accused produced fake and forged driving licence and badge marked as Ext.D1 and D1(a) before the court.

18. Thus the categorical evidence of PW29 r/w evidence of PW32, the evidence of PW17, another bus driver and DW1 would establish with no iota of doubt that the 1st accused is a person having deformity and disability to drive a heavy vehicle and after knowing the said fact he had driven a heavy vehicle, that too, without having valid driving licence, after sharing common intention with the 2nd accused. Since it has been established by evidence as per Ext.P49, the R.C particulars of bus bearing Reg.No.KL6A 6789 proved through PW32, that the 2nd accused was the owner of the bus, it has to be held that the 2nd accused, the

owner of Chackochi bus, who is none other than the brother of the 1st accused, authorised the 1st accused to drive the bus with the said knowledge, after sharing common intention with the 1st accused.

19. Since it is argued by the learned counsel for the appellants/accused that the offence found to be committed as one under Section 304 Part II of I.P.C, cannot be sustained in the facts and evidence adduced in this case and the offence should have been one under Section 304A of I.P.C, it is necessary to refer the relevant provisions of I.P.C dealing with the ingredients of offence under Section 304 Part I and II of I.P.C and 304A of I.P.C. Section 304 of I.P.C provides punishment for culpable homicide not amounting to murder, which is extracted as under:

> *"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."

20. Section 299 of I.P.C defines culpable homicide not amounting to murder, which is extracted as under:

"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."

21. Section 304 of I.P.C contains 2 parts and the first part deals with culpable homicide not amounting to murder in case where death caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death. The second part deals with act done with the knowledge that is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death. Since the appellants

herein were convicted under Section 304 part II of IPC, it is necessary to address the ingredients which are necessary to prove an offence under Section 304 Part II of I.P.C and also the ingredients to constitute an offence under Section 304A of I.P.C.

22. In this connection, I am inclined to refer a decision of the Apex Court reported in [(2012) 2 SCC 648], ***Alister Anthony Pareira v. State of Maharashtra***. In the said case, the accused therein was tried for the offences under Section 304 Part II and under Section 338 of I.P.C. The allegation of the prosecution in so far as the offence under Section 304 Part II I.P.C is concerned, the same runs on the premise that on 12.11.2006 between 3.45 a.m and 4.00 a.m the accused had driven the car bearing No.MH 01 R 580 rashly and negligently with knowledge that people were sleeping on footpath and likely to cause death of those persons sleeping over footpath and thereby caused the death of seven persons, who were sleeping on footpath on Carter Road and

thereby committed an offence punishable under Section 304 Part II IPC. In the said case, while confirming the conviction entered into by the trial court and confirmed by the appellate Court, the Apex Court held that knowledge contemplated under Section 304 Part II is attributable to a drunk driver, driving a motor vehicle rashly at high speed.

23. In the said decision, the Apex Court considered an earlier decision reported in [(2007) 14 SCC 269 : 2007(3) KHC 175 : 2007 (3) KLT 400 : 2007 (2) KLD 42], ***Prabhakaran v. State of Kerala***. The prosecution case was that the bus was being driven by the accused therein at enormous speed and though the passengers had cautioned the driver to stop as they had seen children crossing the road in queue, the driver ran over a student on his head. It was alleged that the driver had real intention to cause death of persons to whom harm might be caused on the bus hitting them. The accused was charged for offence punishable under

Section 304 of I.P.C. But the trial court found that no intention had been proved in the case. But it was found that the accused acted with the knowledge that it was likely to cause death, and therefore, the trial court found that the accused committed offence under Section 304 Part II of I.P.C. On appeal, the High Court also concurred the said view, but the Apex Court converted the conviction and sentence to offence under Section 304A of I.P.C

24. Thus the law is clear on the point that when there is knowledge to the accused that the act he had done is likely to cause death of a person and with the said knowledge he had done the act and in consequence thereof the person died, it will be definitely a case falling under Section 304 Part II of I.P.C.

25. In ***Alister Anthony Pareira v. State of Maharashtra***'s case (*supra*), the Apex Court observed as under:

> *"45. In **Prabhakaran v. State of Kerala**'s case (supra), this Court was considered 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 an 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 I.P.C 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 the 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 ***Prabhakaran****'s case that the appropriate conviction would be under Section 304-A IPC and not Section 304 Part II IPC.* ***Prabhakaran*** *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*** *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 I.P.C 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 of I.P.C."

26. In the decision reported in [(2007) 3 SCC 474], ***Rathnashalvan v. State of Karnataka***, when the Apex Court dealt with a case where the allegation of the prosecution was that on 27.03.1996, at about 11 a.m, the accused, being the driver of a lorry bearing Reg.No.KL13 4363, drove the same in a rash and negligent manner and dashed against a tree, which was on the side of the road and caused death of 3 persons and injuries to 3 persons travelled in the cabin of the lorry. In the said case, the accused was charge-sheeted for the offences punishable under Sections 279, 337 and 304A of I.P.C. Trial court convicted the accused under Sections 279, 337 and 304A of I.P.C and the High Court on appeal,

set aside conviction under Section 279 and confirmed conviction and sentence under Sections 337 and 304A of I.P.C. The Apex Court also confirmed the said finding in the above decision. In the said decision also, while dealing with the ingredients to constitute an offence under Section 304A of I.P.C, the Apex Court held as under :

> *"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 indifferences 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."

27. In ***Alister Anthony Pareira v. State of Maharashtra***'s case (*supra*), negligence or rashness is the cause of death and nothing more, Section 304A may be attracted, but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II of the Indian Penal Code, 1860 may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrong doer to cause death, offence may be punishable under section 302 I.P.C. If a person willfully

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 304A of I.P.C has to make room for the graver and more serious charge of culpable homicide.

28. In the decision reported in [(2020) 5 CTC 767], ***Bhagwan Singh v. State of Uttarakhand***, a case of celebratory firing by appellant-accused on his son's marriage, caused death of two persons and injuries to three others it was held that appellant cannot escape consequences of carrying gun with live cartridges, with the knowledge that firing at marriage ceremony with people's presence was imminently dangerous and was likely to cause death. Therefore, appellant was convicted under Section 304 part II of

I.P.C.

29. In the judgment reported in [(2019) 20 SCC 502], ***Kalabhai v. State of M.P***, a burning stove was thrown at the deceased in the midst of a quarrel. It implies the absence of any premeditation and also that the person throwing the stove had knowledge that such act is likely to cause death. However, the intention of accused to cause death was not established. Hence, the conviction was altered to one under section 304 Part II of I.P.C.

30. In the decision reported in [(2012) 8 SCC 450 : 2012 CrLJ 4174 : AIR 2012 SC 3104], ***State Tr. PS Lodhi Colony New Delhi v. Sanjeev Nanda***, the accused in an inebriated state, after consuming excessive alcohol, was driving the vehicle without licence, in a rash and negligent manner in a high speed which resulted in the death of six persons. Trial court convicted the accused under Section 304 Part II, but High Court altered the conviction to Section 304A. The Apex Court held that the accused

had the sufficient knowledge that his action was likely to cause death and such action would, in the facts and circumstances of the case, fall under section 304(II) of the Indian Penal Code, 1860 and the trial court has rightly held so.

31. As far as the ingredients to constitute an offence punishable under Section 304 Part II of I.P.C are concerned, the following are the vital ingredients:

(i) The act was done by the accused;

(ii) the said act of the accused caused death

and

(iii) the said act was done with the `knowledge' that it is likely to cause death.

Coming to the ingredients to constitute an offence under Section 304A of I.P.C, the ingredients of Section 299 or Section 300 of I.P.C are totally excluded and the said offence includes rash or negligent act or the said act of the accused if caused death and the

said act was done without intention or knowledge likely to cause death.

32. Coming to the other evidence, soon after the occurrence PW1 given Ext.P1 F.I.S and accordingly FIR was registered. Ext.P2 is the inquest report in relation to deceased Mohanan and the same was proved through PW2, who prepared the same and through the evidence of PW3, the wife of Mohanan. Similarly, Ext.P3 inquest report was proved through PW4 and PW5, the wife of Joseph. PW3 is wife of deceased Mohanan, PW5 is wife of deceased Joseph.

33. PW6 had signed Ext.P4 inquest report in respect of deceased Prabhakaran, PW7 is cousin of deceased Prabhakaran and PW8 is neighbour of Prabhakaran. PW9 is the signatory to Ext.P5 inquest report in respect of deceased Manju and PW10 is the husband of the elder sister of deceased Manju. PW11 is the signatory to Ext.P6 in respect of deceased Surya and PW12 is the

uncle of deceased Surya. Ext.P8 is the postmortem report in respect of Mohanan, Ext.P9 is the postmortem certificate in respect of Joseph, Ext.P10 is the postmortem certificate in respect of Kunjan @ Prabhakaran, Ext.P11 is the postmortem certificate in respect of Surya and Ext.P12 is the postmortem certificate in respect of Manju. The evidence of PW26 proves the fact that the death of Mohanan was due to massive hemorrhage shock sustained due to injury to liver, that the death of Joseph was due to brain injury and intra cranial hemorrhage, that the death of Prabhakaran was due to hemorrhage and shock sustained from left lung injury, that the death of Surya was due to brain injury and intra cranial hemorrhage and the death of Manju was due to hemorrhage and shock sustained from massive brain injury.

34. Thus the evidence of PW27 and Exts.P13 to P35 wound certificate and the evidence of PW28 and Exts.P36 to P43 certificate categorically established the fact that several persons

who were travelling in the bus sustained simple as well as serious injuries. Hence the death of 5 persons and the fact that several persons sustained injuries when the bus driven by accused No.1 after hitting on the culvert on the right side fell to the depth on the left side of the road is proved by the evidence adduced by the prosecution.

35. In this matter, a defence was taken by the accused during examination under Section 313 Cr.P.C urging that there was brake failure to the vehicle. PW30 joint RTO, who inspected the vehicle and prepared Ext.P47 inspection report given evidence in support of Ext.P47 stating that there was no mechanical defect to the vehicle in the accident and the defects noted in Ext.P47 were occurred after the accident. Ext.P7 scene mahazar would go to show that the bus fell into a depth of 15 metre from the road and was lying supported by a tree. The nature of accident would suggest that the accident was contribution of the 1st accused and the

vehicle had no mechanical defect at the time of accident or before the accident. Other witnesses including the police, who registered FIR, and the police officers, who investigated the crime, also supported the prosecution and thereby the learned Additional Sessions Judge, after appraising the evidence, found commission of offence under Section 304 Part II r/w 34 of I.P.C by the appellants/accused.

36. On oral re-appreciation of the evidence discussed, I have no hesitation to hold that the learned Additional Sessions Judge rightly entered into conviction under Section 304 Part II r/w 34 of I.P.C and the said conviction does not require any interference.

37. The next question is regarding the proper sentence. Sentencing is an important task in matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence, commensurate with the

nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula to sentence an accused on finding conviction. Certain principles have been evolved by courts in the matter of sentencing. Retribution, deterrence, rehabilitation, incapacitation and restoration are 5 generally accepted worldwide principles of sentencing. A short description of the said principles is as under:

Retribution

This is one of the first forms of punishment - essentially the idea of "an eye for an eye." Those who favor retribution believe it gives the victims of crime, or society as a whole, a sense of satisfaction knowing a criminal received the appropriate level of punishment for the crime committed. Lawmakers face the task of determining these appropriate levels of punishment, which can range from speeding ticket fine amounts to mandatory sentences for certain crimes.

Deterrence

Deterrence aims to prevent future crime and can focus on specific and general deterrence. Specific deterrence deals with making an individual less likely to commit a future crime because of fear of getting a similar or worse punishment. General deterrence refers to the impact on members of the public who become less likely to commit a crime after learning of the punishment another person experienced.

Rehabilitation

Rehabilitation seeks to prevent future crime by altering a criminal's behavior. This typically includes offering a host of programs while in prison, including educational and vocational programs, treatment center placement, and mental health counseling. This approach also typically gives judges the flexibility to mix in rehabilitation programs as part of a criminal's sentencing. The goal is to lower the rate of recidivism, or people committing

another crime after getting released from prison.

Incapacitation

This is another ancient approach that remains popular. Incapacitation simply means removing a person from society. This includes incarceration in prison, house arrest and, in its more dire form, execution. Many feel the flaw in this approach is that it doesn't address rehabilitation or recidivism, the latter of which tends to remain high in societies that practice incapacitation.

Restoration

This new approach to criminal justice calls for the offender to make direct amends to the victim of their crime, as well as the community where the crime occurred. Judges use this approach mostly with juvenile offenders. In this approach, the criminal and the victim meet so that the offender can hear what the victim says about their experience with the crime committed. The offender then strives to make amends and committed. The offender then strives to

make amends and seek forgiveness.

These theories are intricately involved in studies on the types of crimes and their punishments. Society developed each of them with the idea of ensuring appropriate punishment for criminals and safety for society.

38. The twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice in a particular case depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances, while imposing sentence.

39. In [(2000) 4 SCC 75 : 2000 SCC (Cri) 755], ***State of Karnataka v. Krishnappa***, the Apex Court made these weighty observations while addressing the sentencing policy by courts, though the offence involved in the case is under Section 376 of I.P.C.:

> *"18. ..... Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced."*

40. In [(2000) 5 SCC 82 : 2000 SCC (Cri) 1208], ***Dalbir Singh v. State of Haryana***, the Apex Court was concerned with a case where the accused was held guilty of the offence under Section 304-A IPC. The Court made the following observations:

> *"1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving*

> *would be at the risk of steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic."*

41. Thus it is settled law that the sentence to be imposed in a case should be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the culprit. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to

maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic. In this matter, 5 persons died and 63 persons were injured. In such a case, 5 years rigorous imprisonment imposed by the trial court is found to be reasonable.

42. Therefore, I am not inclined to revisit the sentence also.

43. In the result, the appeal fails and is accordingly dismissed. Resultantly, the conviction and sentence imposed by the trial court stand confirmed.

44. The order suspending sentence and granting bail to the appellants stands cancelled and the bail bond also stands cancelled.

The appellants are directed to surrender before the trial court within 10 days to undergo the sentence. On failure, the trial court is directed to execute the sentence as per law forthwith.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/