Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 493 OF 2016

P.A. Inamdar & Ors. .. Applicants
Versus
The State of Maharashtra & Anr. .. Respondents

WITH

CRIMINAL APPLICATION NO. 568 OF 2016

Samruddhi S. Sawant & Ors. .. Applicants
Versus
The State of Maharashtra & Anr. .. Respondents

WITH

CRIMINAL APPLICATION NO. 569 OF 2016

Marathe Nameeta Prabhakar & Ors. .. Applicants
Versus
The State of Maharashtra & Anr. .. Respondents

WITH

CRIMINAL APPLICATION NO. 975 OF 2016

Shakila Abdul Wahab Siddavatm & Ors. .. Applicants
Versus
The State of Maharashtra & Anr. .. Respondents

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- Mr. Niranjan Mundargi a/w Ms. Keral Mehta, Advocates for Applicants in APL No.493/2016
- Mr. Sidheshwar Biradar a/w Mr. Dinesh .R. Shinde & Mr. Omhari B. Fawade, Advocates for Applicants in APL Nos.568/2016, 569/2016 & 975/2016.
- Ms. Rajeshree V. Newton, APP for Respondent No. 1 - State.
- Mr. Abhishek Pungliya, Advocate for Respondent No. 2 in all four Applications.
- Mr. Tausif Sayyed, API, Murud Police Station, Raigad present.

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CORAM : MILIND N. JADHAV, J.
DATE : OCTOBER 22, 2026

JUDGEMENT:

1. Heard Mr. Mundargi, learned Advocate for Applicants in Application No.493 of 2016; Mr. Biradar, learned Advocates for Applicants in Application Nos.568 of 2016, 569 of 2016 and 975 of 2016; Ms. Newton, learned APP for Respondent No.1 - State and Mr. Pungliya, learned Advocate for Respondent No.2 in all four Applications.

2. All four Applications are filed under Section 482 of Code of Criminal Procedure, 1973, seeking to quash and set aside First Information Report No.24 of 2016 dated 19.04.2016 registered at Murud Police Station, Raigad, under Sections 304A and 34 of Indian Penal Code, 1860 (for short '**IPC**') against Applicant.

3. Briefly stated, in Application No.493 of 2016, Applicant Nos.1 to 5 are office bearers of a public trust namely Maharashtra Cosmopolitan Education Society, Pune, which runs a college namely Abeda Inamdar Senior College of Arts, Science and Commerce, Pune, of which Applicant No.6 was the in-charge Principal during the relevant time. Applicants in Application Nos.568 of 2016, 569 of 2016 and 975 of 2016 are Assistant Professors, peons and lab assistant who were employees of the college at the time of incident. Respondent

No.1 is State and Respondent No.2 – Complaintant is the father of one of the deceased students.

3.1. On 01.02.2016, College arranged a picnic to Murud beach, Raigad and 116 students alongwith faculty and staff members went for the picnic. 41 students of the Third Year batch went to the beach at around 3:30 to 4:00 pm and ventured into the sea water for some fun and frolic. Unfortunately, around 20-22 students got swept away in the under current of the sea water. One of the student with the help of local persons managed to rescue about 6 students, however 14 students including the student who was rescued them, lost their lives in the unfortunate incident. After initial enquiry under ADR No.04 of 2016, around 80 days thereafter FIR No.24 of 2016 was registered with Murud Police Station against 17 accused persons i.e. Applicants representing the college in all four Applications.

4. Mr. Mundargi, learned Advocate for Applicants in Application No.493 of 2016 would submit that Applicants are trustees of the trust which runs the Abeda Inamdar Senior College of Arts, Science and Commerce, and vicarious liability cannot be foisted to prosecute them for the alleged offence. He would submit that ingredients of the offence under Section 304A IPC are not at all attracted in view of a catena of decisions of this Court and Supreme

Court in similarly placed cases for holding them responsible for the unfortunate incident.

4.1. He would submit that the college authorities had obtained No Objection Certificates from the parents of all students who consented to go on the picnic. He has referred to and relied upon the decision of the Supreme Court in case of ***State of Haryana and Ors. Vs. Bhajan Lal***[1] and submit that the facts in the present case are squarely covered by illustration Nos. (1), (2) and (3) concluded by the Court in paragraph No.102 of this decision for enabling the Court to quash the present criminal proceedings in the facts and circumstances of the instant case. He would submit that Applicants cannot be subjected to the harassment of facing criminal prosecution for no fault on their part, hence the FIR be quashed and set aside.

5. Mr. Biradar, learned Advocate for Applicants in Application Nos.568 of 2016, 569 of 2016 and 975 of 2016 would submit that all Applicants were faculty members and employees of the College who had accompanied the First, Second and Third year of Computer Science stream students for the picnic and travelled in three separate buses to Murud beach. He would submit that on the same day, all Applicants along with students were expected to return safely.

1 1992 AIR 604

5.1. He would submit that Applicants in Application No.568 of 2016 undertook supervision of 45 students of Second Year B.Sc. (Computer Science) for the picnic and travelled in separate bus to Murud beach. He would submit that Applicants in Application No.569 of 2016 took 26 students of the First Year B.Sc. (Computer Science) and they also travelled in a separate bus to Murud beach. He would submit that on the same day, Applicants alongwith students of the First and Second year returned back safely.

5.2. He would submit that the Applicants in Application Nos. 568 of 2016 and 569 of 2016 were the teachers responsible for supervising the First Year and Second Year students. However, the Third-Year students who unfortunately met with the accident were not under their supervision and therefore the Applicants cannot be held responsible for the incident. He would submit that Applicants in Application No.975 of 2016 had taken 41 students of Third Year B.Sc. (Computer Science) to picnic and travelled in a separate bus to Murud beach. He would submit that all 14 students who unfortunately demised by drowning were from the Third Year B.Sc. (Computer Science) stream.

5.3. He would submit that all Applicants had taken sufficient care as much they could take and there cannot be vicarious liability imposed against Applicants in Application Nos.568 of 2016, 569 of

2016 and 975 of 2016 to prosecute them for the above offence. He would submit that after the alleged incident, Murud Police Station carried out a detailed enquiry under ADR No.4 of 2016 and post such enquiry filed FIR against Applicants which is nothing but a misuse of the judicial system for no fault of Applicants. Therefore, he would submit that said FIR accusing the Applicants including those whom he represents be quashed and set aside.

6. ***PER CONTRA***, Ms. Newton, learned APP appearing for Respondent No. 1 – State in all four applications would submit that death of daughter of Respondent No.2 as well as the 13 others was a direct cause of negligence of Applicants who are directly responsible for ensuring the safety of students who went for the picnic to Murud beach through the College. She would submit that Applicants ought to have taken all required precautionary measures before conducting such a trip at places especially when large number of students participate in the picnic, and where they have knowledge that chances of life threatening accidents cannot be denied / averted.

6.1. She would submit that despite all students being major but emerging adults, it was the responsibility of the college who organised the said picnic to have ensured safety of all students. She would submit that Applicants cannot deny their responsibility towards their college students for whom they were responsible as faculty and

supervisors for the picnic at the beach where the students ventured into the sea and lost their lives. She would submit that Applicants were liable to ensure students' safety and ought to have prevented them from venturing into the sea and therefore Applicants are at direct fault.

6.2. She would submit that all Applicants failed to be vigilant when they had taken such a large contingent of students for the picnic where there were no safety signals or warnings for students indicating safe swimming zone and they did not discourage them from going beyond the line of safety. She would submit that presence of one of the Applicants on behalf of the Trust at the place of incident could have enabled them to take quick rescue actions and could have led to save more lives. Therefore, she would submit that negligence on their part is absolute, and hence, the applications seeking quashing of the offence be dismissed.

7. Mr. Pungliya, learned Advocate for Respondent No. 2 - Complainant in all four Applications would submit that contents of investigation report with respect to testimony of Ms. Kazi – the survivor student is inconsistent with her Affidavit dated 27.01.2017. He would submit that the date/day of the beach trip was unilaterally changed by the said college which significantly contributed to causing death by drowning. He would submit that students were not warned

by Applicants about the dangerous part of Murud beach where they got swept away due to under water sea current which clearly exhibits negligence on their part.

7.1. He would submit that Applicants erred in allowing the contingent of 116 students to go for picnic to a beach without a single doctor and without a single member who could swim in sea water. He would submit that none of the staff members / Applicants were even present on Murud beach at the time of the incident and instead chose to rest in a hotel 500 meters away from the beach which *prima facie* contributes to their negligence.

7.2. He would submit that Applicant No.1 (Trustee and HOD of Computer Science) and Applicant No.6 (in-charge Principal of college) were directly involved in planning and execution of the picnic to the beach comprising of such a large contingent of 116 students. Therefore, he would submit that Applicants cannot escape responsibility for their role and criminal negligence in causing death of students especially when separate additional charges were collected from each student for participating in the picnic by the Institution.

7.3. He would submit that in view of the aforesaid facts and findings of the Savitribai Phule Pune University's report dated 23.06.2016 in respect of multiple gross violations of the UGC

Guidelines on safety of students on and off campus and criminal negligence on the part of all Applicants, they need to be investigated in a full trial. He would submit that Respondent No.2 / Complainant be allowed to make his submissions before learned Magistrate on the contents and conclusions of chargesheet after its filing and in that view of the case, present applications be dismissed.

8. I have heard the learned Advocates appearing for the respective parties and with their able assistance perused the record of the case. Submissions made by learned Advocates at the bar have received due consideration of the Court.

9. Though admittedly a very traumatizing and unforgettable incident has occurred causing severe suffering to the Complainant and all parents of deceased students which undoubtedly cannot be reversed by any of the parties before Court by any means. It is seen that insofar as Applicants (office bearers of the Trust and Secretary) in Application No.493 of 2016 are concerned, they cannot be held liable for the said offence, as facts of the case do not attract the provisions of Section 304A of IPC. Section 304A reads thus:

> *"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."*

9.1. It is seen that these Applicants in Application No.493 of 2016 were not even present at the time and venue of the picnic along with other Applicants who accompanied the students on the College picnic to the beach. These Applicants cannot be held liable for the death of 14 students because according to Section 304A, any rash or negligent act on part of Applicants in Application No.493 of 2016 has not been or cannot be *prima facie* established. It is seen that there is no material on record to establish negligence on the part of these Applicants having a direct/proximate connection or role attributable to causing death of the 14 students by drowning in the unfortunate incident.

10. Insofar as Applicants in Application Nos.568 of 2016 and 569 of 2016 are concerned, they were accompanying the students of the first and second year stream and returned back safety. Hence even they cannot be held liable for negligence towards the unfortunate incident in which the the third year students of B.Sc. Computer Science met with the accident. It is seen that Applicants in Application Nos.568 of 2016 and 569 of 2016 accompanied the first and second year Computer Science stream students and were always with them and therefore considering the role attributed to them which is undisputed, they cannot be held liable merely because they belonged

to the same college or same department and went alongwith students to the picnic.

11. Insofar as Applicants in Application No.975 of 2016 are concerned, they were the faculty / College members who accompanied the 41 students of the third Year B.Sc. (Computer Science) out of which 14 students drowned in the unfortunate incident. It is seen that to hold these Applicants supervising the third year students liable for rash or negligent act, it is therefore pertinent to establish that death of the students caused due to drowning was a direct result or consequence of these Applicants negligent act.

12. It is seen that students pursuing their third year B.Sc. being mature and possessing a reasonable degree of life experience, can reasonably be expected to understand the distinction between right and wrong and to appreciate the likely consequences of their own actions and conduct. It is seen that it was in this context that these Applicants accompanying them permitted them to enjoy the fun and frolic on the beach. The resting place hotel was at a distance of 500 meters from the beach. All 41 students of the third year batch ventured into the sea water, but 20 out of them got swept away in the water current, out of which 6 were saved, but the other students could not be saved. However, in these circumstances it is seen that unfortunately the death of 14 students by drowning was an accident

and in the absence of any incriminating material establishing a direct or proximate connection with any negligent act leading to the deaths by drowning, liability or criminal act cannot be attributed to negligence on their part.

13. Therefore it is seen that the *causa causans* of the death of the 14 students was their drowning in the seawater and not due to any overt negligent act or negligence on the part of Applicants. It is seen that the incident was, in the circumstances, an unfortunate mishap and accident and cannot be attributed to any proximate or efficient cause arising from the alleged negligence of these Applicants. It is seen that in this context, the contention advanced by Mr. Pungliya that the change in the date of the picnic significantly contributed to the incident does not appear to be sustainable.

14. Before I part with this judgment, there is one larger question which I deem it necessary to address in the larger interest of the Society at large and more specifically because of applicability of the prevalent statute in such cases in today's times. There is also a distinction required to be drawn where such mishaps or accidents occur due to negligence and vicarious liability. When there is loss of human life it is a very sad thing, loss of human life can be in any form. Here is a case where 14 out of 41 students who were all major i.e. above 18 years of age lost their lives due to drowning on a public

beach which is generally open to the public at large. It is infact a very popular beach. The students in the instant case had gone on a college picnic. In the same vein, day in and day out, we come across hordes of people indulging in fun and frolic by venturing into the sea water at public beaches. In the event of a mishap with regard to a private party, the law does not envisage filing a criminal case for negligence against the parents or the persons with whom the victims come to enjoy the fun and frolic and venture out into the sea. Though the law relating to Section 304A of IPC is fairly well settled, the concept of vicarious liability especially in such cases where the victims are major i.e. above 18 years of age, there is no precedent.

15. A majority of cases which lay down the law of negligence and vicarious liability pertain to similar instances but of minors and therefore in that factual situation there is a much higher degree of supervision that is called for. However in the case of students who are major and above 18 years of age and that too in a public place and public beach, in my opinion, in the absence of *mens rea* it would be a case of simple accident. The question that would then arise is about fixing negligence and on whom. The reason I am impelled to deal with this issue is because I have come across no precedent in this regard, and I consider it the duty of the Court to explore an area where there is a clear legal vacuum. This is because it is common for colleges and

schools to arrange outdoor picnics and excursions to water parks, waterfalls, public beaches, resorts, as a part of development of the students which is focused on team development, team building, skill development, for balanced structured growth and as a part of studies.

16. Many schools and colleges organize such picnics, outdoor activities, treks to various places as a part of all round development for their students. When the students are minor, a higher degree of caution and supervision is called for especially when they venture into the swimming pool or seawater or river water or lake water. It is generally seen that some of the teachers along with professional picnic organizers accompany the students especially when school trips are organized. However, that is not the case when college trips are organized. Considering the age of the students in college, generally it is observed that some teachers accompany them as supervisors, but not in a strict sense.

17. Undoubtedly, the management of the education institution or the trustees of the Trust which operates the school do not accompany them. They generally call for a "No Objection Form" or "Consent Form" required to be signed by both parents to absolve any liability to the Institution in case of mishap. The present case is a classic example of such an instance. In the instant case, students of First Year, Second Year and Third Year went for a picnic in 3 buses -

one each for the respective years. The First Year students were accompanied by 2 teachers, Second Year students were accompanied by 2 teachers and similarly Third Year students were accompanied by 2 teachers. Some other employees of the College also accompanied them. All three batches travelled in different buses though the picnic place was common. At about 3:45 p.m., after lunch, all students of the Third Year batch decided to revisit the beach, which was situated at some distance from the venue where they had lunch. This was their second visit to the beach on that day, and they accordingly proceeded after taking permission from the 2 teachers who accompanied them. Incidentally, both the teachers who had come along with them did not go with them but rested themselves. It is seen that all 41 students ventured into the sea out of whom unfortunately 14 students were swept away and lost their lives.

18. In these facts the prosecution has invoked vicarious liability against not only the two teachers who were accompanying the Third Year students for the picnic who did not accompany them to the beach in the post afternoon session but also against those teachers who had accompanied the First Year and Second Year students and the trustees of the Trust which operates the college in which the students were studying.

19. The question which begs an answer is whether vicarious liability can be imposed and invoked against the Management of the school and / or trustees of the Trust operating the school and / or other teachers who were not directly responsible or even against the 2 teachers accompanying these 41 students in such a case. Before I answer this question, we need to understand as to how the provisions relating to Section 304A of IPC have been received by the Court. The earliest of the decisions that is available in this regard is the case of ***Emperor vs. Omkar Rampratap***[2] wherein while interpreting Section 304A of IPC, Sir Lawrence Jenkins observed as follows:-

> *"To impose criminal liability under Section 304-A 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 cause causans; it is not enough that it may have been the cause sine qua non."*

19.1. The aforesaid view has been generally followed by the High Courts in India. In the case of ***Kurban Hussein MohamedAlli Rangawalla Vs. State of Maharashtra***[3] the Supreme Court had an occasion to deal with interpretation of Section 304A of IPC but in a different context namely related to a negligent act causing fire in a factory and leading to death of 7 workmen by burning. The interpretation of Section 304A qua any rash or negligent act causing

2 1902 4 Bom LR 679

3 1964 SCC OnLine SC 162

death was held to be in the context it being direct or proximate result of such an act and while quoting Sir Lawrence Jenkins in ***Emperor*** *(2nd supra)* the Supreme Court expanded the scope of Section 304A to include intervention of another person's negligence while acquitting the Appellant therein who was the manager and working partner of the factory where the fire had occurred.

20. In the case of ***M.S. Grewal and Anr. Vs. Deep Chand Sood and Ors.***[4] the Supreme Court dealt with a matter involving minor children who had been taken by their school on an outdoor picnic near a river and who, accompanied by two teachers, ventured some distance downstream. The teachers discovered that the river was about 6 to 8 feet deep and all of them fell into the same. In that case the teachers could save themselves but 14 minor students lost their lives by drowning and a Commission of inquiry was set up. Though the aforesaid decision of the Supreme Court predominantly dealt with the question of compensation or damages and the assessment thereof, it also did examine important legal principles relating to negligence and vicarious liability which are relevant to the case at hand. More importantly, it considered whether a school could be absolved of its responsibility and corresponding liability in respect of an incident such as the one in question; whether the school could be regarded as a joint

4 (2001) 8 SCC 151

tortfeasor; and whether it could be held liable for an incident that occurred beyond the school premises.

21. I am conscious of the fact that the aforesaid decision concerned school children who were minors. The decision is referred to herein only for the purpose of placing on record the aforementioned legal principles as enunciated by the Supreme Court. It is pertinent to note, however, that the Supreme Court left open the question of whether the school authorities could be regarded as joint tortfeasors. Nevertheless, while delineating the scope of negligence and vicarious liability under common law in paragraph Nos. 14 to 17, and while explaining the doctrine of vicarious liability in paragraph Nos. 18 to 24, the Supreme Court held as under:-

Paragraph Nos. 14 to 17 with respect to negligence are reproduced hereunder:-

> *"**14.** Negligence in common parlance means and implies "failure to exercise due care, expected of a reasonable prudent person". It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of the safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do (vide Black's Law Dictionary). Though sometimes the word "inadvertence" stands and is used as a synonym to negligence, but in effect negligence represents a state of the mind which, however, is much serious in nature than mere inadvertence. There is thus existing a differentiation between the two expressions — whereas inadvertence is a milder form of negligence, "negligence" by itself means and implies a state of mind where there is no regard for duty or the*

supposed care and attention which one ought to bestow. Clerk and Lindsell on Torts (18th Edn.) sets out four several requirements of the tort of negligence and the same read as below:

> *"(1) The existence in law of a duty of care situation i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in suit on the class of person to which the claimant belongs by the class of person to which the defendant belongs is actionable.*
>
> *(2) Breach of the duty of care by the defendant i.e. that it failed to measure up to the standard set by law.*
>
> *(3) A causal connection between the defendant's careless conduct and the damage.*
>
> *(4) That the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote."*

15. *While the parent owes his child a duty of care in relation to the child's physical security, a teacher in a school is expected to show such care towards a child under his charge as would be exercised by a reasonably careful parent. In this context, reference may be made to a decision of Tucker, J. in Ricketts v. Erith Borough Council [(1943) 2 All ER 629 : 113 LJKB 269 : 169 LT 396] as also the decision of the Court of Appeal in Prince v. Gregory [(1959) 1 WLR 177 : (1959) 1 All ER 133 (CA)] .*

16. *Duty of care varies from situation to situation — whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the playfield. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to a playground near a river for fun and a swim, the degree of care required stands at a much higher degree and no deviation therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for a swim by reason of popular sayings will not be a sufficient compliance. As a matter of fact the degree of care required to be taken, especially*

against the minor children, stands at a much higher level than adults: children need much stricter care.

17. *Incidentally, negligence is an independent tort and has its own strict elements especially in the matter of children — the liability is thus absolute vis-à-vis the children. The school authorities in the contextual facts attributed negligence to the two teachers who stand convicted under Section 304-A of the Penal Code, 1860 as noticed above and Mr Bahuguna appearing in support of the appeal during the course of hearing, however, also in no uncertain terms attributed utter negligence on the part of the teachers and thus conceded on the issue of negligence. Concession, if any, as noticed above, though undoubtedly a good gesture on the part of the school authorities, but can the School be absolved of its responsibility and corresponding culpability in regard to the incident: would they be termed to be a joint tortfeasor or would it be a defence that the School had taken all due care having regard to its duty and it is irrespective thereof, by reason of utter neglect and callous conduct on the part of two of the teachers escorting them that had caused the injury — Mr Bahuguna contended that the school cannot be made liable under any stretch of imagination by reason of the happening of an event which is not within the school premises and has, in fact, happened by reason of the neglect of two of the teachers. It is on this score that Mr Malhotra rather emphatically contended that the liability cannot simply be obliterated by reason of plea of utter neglect on the part of two of the teachers: the School concerned can be said to be liable even as a joint tortfeasor and in any event, Mr Malhotra contended that applicability of the doctrine of vicarious liability cannot be doubted or be brushed aside in any way whatsoever and since the issue of vicarious liability has been more emphatic and pronounced than the issue of joint tortfeasor, we deem it expedient to deal with the second of the twin issues first as noticed above.*

Paragraph Nos. 18 to 24 on Vicarious Liability are reproduced hereunder:-

18. *Be it noted that the doctrine of "vicarious liability" has had a fair amount of judicial attention in the English courts. By the end of the 18th century, the idea began to grow that some special importance ought to be attached to the relationship of master and servant and in 1849 it was officially held that existence of that relationship was essential. Thereafter, though primary liability on the part of anyone could be established on*

proof of direct participation in the tort, such direct participation was not even theoretically required to make a master liable for his servant's torts. The liability is derived from the relationship and is truly vicarious. At the same time, the phrase "implied authority" which had been the cornerstone of the master's primary liability gives way gradually to the modern "course of employment" (vide Winfield and Jolowicz on Tort, 15th Edn.).

19. *In recent years, the tendency has been however, towards more liberal protection of the third party and so in establishing a particular "course of employment" the court should not dissect the employee's basic task into component parts but should ask in a general sense: what was the job at which he was engaged for his employer? And it is on this perspective Lord Wilberforce in Kooragang Investments Pty. Ltd. v. Richardson & Wrench Ltd. [1982 AC 462 : (1981) 3 All ER 65 (PC)] stated:(All ER p.69a-e)*

> *"Negligence is a method of performing an act: instead of it being done carefully, it is done negligently. So liability for negligent acts in the course of employment is clear. Cases of fraud present at first sight more difficulty, for if fraudulent acts are not directly forbidden, most relationships would carry an implied prohibition against them. If committed for the benefit of the employer and while doing his business, principle and logic demand that the employer should be held liable, and for some time the law rested at this point. The classic judgment of Willes, J. in Barwick v. English Joint Stock Bank [(1867) LR 2 Exch 259 : 36 LJ Ex 147 : 16 LT 461] Exch at p. 266 stated the principle thus:*
>
> *'In all these cases it may be said … that the master has not authorized the act. It is true, he has not authorized the particular act, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in.'*
>
> *That was a case where the wrong was committed for the master's (viz. the bank's) benefit, and Willes, J. stated this as an ingredient of liability (Exch at p. 265):*
>
> *'… the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit,*

> *though no express command or privity of the master be proved.' ..."*

20. *But a sharp distinction has been made as regards the group of cases which is concerned with the use of motor vehicles. These are the cases, Lord Wilberforce observed: (All ER p.70a-c)*

> *"(i) where a servant has, without authority, permitted another person to drive the master's vehicle, (ii) where a servant has, without authority, invited another person on to the vehicle, who suffers injury, (iii) where a servant has embarked on an unauthorised detour, or, as lawyers like to call it, a 'frolic of his own'.*
>
> *These cases have given rise to a number of fine distinctions, the courts in some cases struggling to find liability, in others to avoid it, which it is not profitable here to examine. It remains true to say that, whatever exceptions or qualifications may be introduced, the underlying principle remains that a servant, even while performing acts of the class which he was authorised, or employed, to do, may so clearly depart from the scope of his employment that his master will not be liable for his wrongful acts."*

21. *The English law, therefore, takes a softer attitude in cases where motor vehicles are involved in the matter of foisting of liability so far as the employer is concerned — the reason obviously being that if the employee concerned acts in a manner contrary to the course of employment and on a "frolic of his own", why should the employer be made responsible? It seems logical — but obviously there are cases and cases on the basis wherefor the liability of the employer ought to be fixed. The Privy Council in Kooragang Ltd. [1982 AC 462 : (1981) 3 All ER 65 (PC)] attributed "frolic of his own" to be the exonerating factor but this frolic has also to be considered from facts to facts in the matter of foisting of liability on to the employer. In any event, we need not devote much of our time to the excepted cases, since we have in this country several legislations covering the "excepted categories". The recognition of broader approach, however, stands undisputed and has also our concurrence herewith.*

22. *Significantly, however, Mr Malhotra with all the emphasis at his command and rather strongly commented upon the submissions of Mr Bahuguna on the issue of award of compensation by reason of specific legislations in the country — in particular reference to the Motor Vehicles Act and on a conjoint reading of the Second Schedule thereto, Mr Malhotra contended that the quantum would be far in excess of the amount awarded by the High Court — submissions seem to be rather attractive: the Motor Vehicles Act and the Second Schedule thereto cannot but be treated to be a guide in the matter of award of compensation and there cannot possibly be any doubt in regard thereto. We shall, however, be dealing with the issue slightly later in this judgment.*

23. *Turning attention, however, on to the issue of vicarious liability, one redeeming feature that ought to be noticed at this juncture is that to escort the children was the duty assigned to the two teachers and till such time thus the period of escorting stands over, one cannot but ascribe it to be in the course of employment — the two teachers were assigned to escort the students: the reason obviously being — the children should otherwise be safe and secure and it is the act of utter negligence of the two teachers which has resulted in this unfortunate tragedy and thus it is no gainsaying that the teachers were on their own frolic and the School had done all that was possible to be done in the matter — safety of the children obviously was of prime concern so far as the school authorities are concerned and till such time the children returned to school, safe and secure after the picnic, the course of employment, in our view continued and thus resultantly, the liability of the School.*

24. *A profitable recapitulation of facts depicts that the criminal court has already found both the teachers guilty of utter negligence and convicted them under Section 304-AIPC (which provides that whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with…). We are not inclined to record anything contra, save what stands recorded by the District Court in the criminal proceeding but we are constrained to record our anguish over the conduct of the teachers escorting the students — even a simple rule of discipline and safety would have prompted the teachers not only not to go to the river where they went but nowhere near the river ought to have been the guiding factor — children are children, fun and frolic stand ingrained in them and it is the school/teachers deputed for escorting who ought to be reasonably careful since entrusted*

> *with the safety — this entrustment ought to have infused a sense of duty which should have prompted them to act not in the manner as they have so acted."*

22. The aforementioned principles enunciated by the Supreme Court *qua* negligence and vicarious liabilities apply to the present case also. Supreme Court holds that the distinction is that the degree of care required to be taken especially in case of minor children stands at a much higher level than adults. On the issue of vicarious liability, Supreme Court held that the tendency over the years has been however towards more liberal protection of the third party and in so establishing a particular course of employment, the Court should not dissect employee's basic task into component parts but should ask in a general sense what was the job at which he was engaged for his employer. The reason for quoting the aforementioned passage is only to drive home the point that the distinction will have to be now made when the victims are adults and take their decisions on their own which leads to a fatal mishap. In such a situation can vicarious liability be foisted on the College or for that matter on the family members of the victims if they are on a private visit and a mishap occurs.

23. Another issue which begs attention is that if vicarious liability is to be fixed then it is also an equal responsibility of the State Government to ensure that all public beaches have adequate signage, warnings facilities to warn public venturing into the sea water for fun

and frolic. In such a scenario, vicarious liability cannot only be directed towards the teachers, management or the educational institution and the trustees of the Trust running the institution when the mishap occurs in a public place and in anticipation of the degree of difficulty envisaged in such cases. It is the responsibility of the Government equally to provide safety measures and correspondingly to be held responsible vicariously.

24. In a subsequent case of ***Jacob Mathew Vs. State of Punjab and Anr.***[5] which pertains essentially to medical negligence, the Supreme Court addressed the jurisprudential concept of negligence as acceptable to Indian jurisprudential thought and defined it to involve 3 constituents of negligence namely, (i) legal duty to exercise due care on the part of the party complained of towards the party complaining the foremost conduct within the scope of the duty (ii) breach of the said duty and (iii) consequential damage. In paragraph Nos. 10 to 17 and 48(1) while defining negligence as a tort, the Supreme Court held as under:-

> *"**10.** The jurisprudential concept of negligence defies any precise definition. Eminent jurists and leading judgments have assigned various meanings to negligence. The concept as has been acceptable to Indian jurisprudential thought is well stated in the Law of Torts, Ratanlal & Dhirajlal (24th Edn., 2002, edited by Justice G.P. Singh). It is stated (at pp. 441-42):*
>
> > *"Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily*

5 (2005) 6 SCC 1

> *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."*

11. *According to Charlesworth & Percy on Negligence (10th Edn., 2001), in current forensic speech, negligence has three meanings. They are: (i) a state of mind, in which it is opposed to intention; (ii) careless conduct; and (iii) the breach of a duty to take care that is imposed by either common or statute law. All three meanings are applicable in different circumstances but any one of them does not necessarily exclude the other meanings. (para 1.01) The essential components of negligence, as recognised, are three: "duty", "breach" and "resulting damage", that is to say:*

> *(1) the existence of a duty to take care, which is owed by the defendant to the complainant;*
>
> *(2) the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and*
>
> *(3) damage, which is both causally connected with such breach and recognised by the law, has been suffered by the complainant. (para 1.23)*

If the claimant satisfies the court on the evidence that these three ingredients are made out, the defendant should be held liable in negligence. (para 1.24)

12. *The term "negligence" is used for the purpose of fastening the defendant with liability under the civil law and, at times, under the criminal law. It is contended on behalf of the respondents that in both the jurisdictions, negligence is negligence, and jurisprudentially no distinction can be drawn*

between negligence under civil law and negligence under criminal law. The submission so made cannot be countenanced inasmuch as it is based upon a total departure from the established terrain of thought running ever since the beginning of the emergence of the concept of negligence up to the modern times. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. 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. The essential ingredient of mens rea cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence. In R. v. Lawrence [(1981) 1 All ER 974 : 1982 AC 510 : (1981) 2 WLR 524 (HL)] Lord Diplock spoke in a Bench of five and the other Law Lords agreed with him. He reiterated his opinion in R. v. Caldwell [(1981) 1 All ER 961 : 1982 AC 341 : (1981) 2 WLR 509 (HL)] and dealt with the concept of recklessness as constituting mens rea in criminal law. His Lordship warned against adopting the simplistic approach of treating all problems of criminal liability as soluble by classifying the test of liability as being "subjective" or "objective", and said: (All ER p. 982e-f)

> *"Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting 'recklessly' if, before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognised that there was such risk, he nevertheless goes on to do it."*

13. *The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the*

risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called optimising violations, may be motivated by thrill-seeking. These are clearly reckless.

14. *In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in Andrews v. Director of Public Prosecutions [1937 AC 576 : (1937) 2 All ER 552 (HL)] stated: (All ER p. 556 C)*

> *"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."*
>
> *Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. In Riddell v. Reid [(1942) 2 All ER 161 : 1943 AC 1 (HL)] (AC at p. 31) Lord Porter said in his speech —*
>
> *"A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability." (Charlesworth & Percy, ibid., para 1.13)*

15. *The fore-quoted statement of law in Andrews [1937 AC 576 : (1937) 2 All ER 552 (HL)] has been noted with approval by this Court in Syad Akbar v. State of Karnataka [(1980) 1 SCC 30 : 1980 SCC (Cri) 59] . The Supreme Court has dealt with and pointed out with reasons the distinction between negligence in civil law and in criminal law. Their Lordships have opined that there is a marked difference as to the effect of evidence viz. 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. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.*
>
> ***16.*** *Law laid down by Straight, J. in the case of Empress of India v. Idu Beg [ILR (1881) 3 All 776 : (1881) 1 AWN 132] has been held good in cases and noticed in Bhalchandra Waman Pathe v. State of Maharashtra [1968 Mah LJ 423 (SC) : 1968 ACJ 38 : 1968 MPLJ 371 (SC)] a three-Judge Bench decision of this Court. It has been held that while 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; 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.*
>
> ***17.*** *In our opinion, the factor of grossness or degree does assume significance while drawing distinction in negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree."*

25. In 2019, the Karnataka High Court in the case of ***Melvin Kumar and Ors. Vs. K.S. Harisha and Anr.***[6] dealt with the case of drowning of a third standard student in a swimming pool while on a school picnic to a holiday resort. In that case initially FIR was registered 5 accused persons under Section 304A of IPC but after investigation, chargesheet came to be laid against 11 persons wherein Accused Nos. 1 to 8 were teachers of the said school and Accused no.9

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was the Secretary of the said school on the ground that Accused Nos. 1 to 9 had arranged the school picnic. Accused No.10 was the employee in charge of the swimming pool in the resort and Accused No.11 was the manager of the said resort at the relevant time. In that case accused persons invoked the jurisdiction of the Court under Section 482 of CrPC for quashing the chargesheet on the grounds that they did not commit the alleged offence, there was no *mens rea*, and the act was an accident and a simple case of negligence on the occupiers of the swimming pool for which they could not be held responsible.

26. While referring to the above referred citations and also relying on the decision of the case of ***Sushil Ansal Vs State through Central Bureau of Investigation***[7] , Supreme Court held that basis of negligence in civil law is conceptually different than in criminal law. Supreme Court held that in order to constitute the offence under Section 304A IPC, an equally important dimension of the offence that is required to be proved by prosecution is that the act of accused person must not only be proximate to the immediate or efficient cause of the death of the victim but also should have been caused without the intervention of any other person's negligence. While relying on the aforesaid principle and applying the ratio in the case of ***Melvin Kumar*** *(6th Supra),* Court held that it was the duty of the occupier of the

7 (2014) 6 SCC 173

resort who owed a duty to take care of the visitors or the licensees who were allowed to use the swimming pool facilities in the resort and therefore Petitioners therein could not be held liable.

26.1. Court held that the occupier owes the highest degree of care wherein visitors and licensees are allowed to use the facilities and therefore negligence could not be attributed to the teachers or Secretary of the school in that case. If the aforesaid principle is applied to the facts of the present case, the occupier or the person who provides the facility in the present case would be the State Government. If there is any degree of difficulty to a visitor meeting with an accident in a public place for example, a public beach then in that case it would be the State Government who would be responsible for the accident in question for not providing adequate life saving amenities, warnings, signages, life guards etc. on the public beach.

27. Applying the ratios of the aforesaid citations especially to the case in hand, where all 41 students who ventured into the sea were adults, by no stretch of imagination can their teachers, the other teachers accompanying other students, the trustees of the Trust and Management of the Educational Institution can be held liable and responsible under Section 304A of IPC. Though it is true that some degree of supervision is but expected of the teachers who accompany

the students, but what is crucial is that there is no mens rea and proximity of a negligent act as discussed hereinabove.

28. The reason for the above discussion is to create awareness so that adequate steps are taken by the government about popular public beaches which are most sought after preferred picnic destinations for school and college picnics as well as all such beach fronts visited by families and family members where people venture into the sea water. These beaches should have regulatory mechanism for adequately warning all such visitors about the dangers of entering into the sea water by signages and warnings and also should employ safety measures, rescue measures in order to avoid unfortunate accidents leading to loss of life.

29. It is a normal and given human tendency that when a human being visits a beach front or sea front the human being ventures into the sea water for some fun and frolic which cannot be curbed or prevented, but certainly, if safety measures are employed as suggested above, it will not lead to a loss of human life as visitors will exercise a greater degree of caution while venturing into the sea water. For example in a given case, if a large family is enjoying a vacation at the beach front and they all venture out into the sea water and if unfortunately a mishap occurs, the law does not prosecute the other family members who were accompanying the person who has lost his

life merely on account of negligence on their part. Therefore I am of the opinion that the State Government through its Ministry of Tourism should make a blueprint of all sea water beachfronts frequented and crowded by visitors weather it be by the general public or school / college students and, draft and implement a uniform policy for display of signage or warning signs at conspicuous locations along the beach fronts as well as the approach roads leading to the beach fronts in English and Marathi language both, warning visitors about the hazards of venturing out into the sea water and depicting the High Tide timings and not only this but, the State Government is also directed to allocate and sanction funds for arranging rescue measures, appoint lifeguards, erect protective grills, watchtowers, deploy lifeguards, conduct regular training programs and refresher training programs for lifeguards, demarcate safe zones for swimming, erect warning signs and red flags during high tide, deploy of Mobile Vans and Jeeps for patrolling beachfronts and resorting to expert agencies for assistance to implement these measures on all beach fronts on a permanent basis so as to avoid such unfortunate accidents in future. The aforementioned exercise and implementation will be a progressive step which will be beneficial to the entire public and society at large and it showcases a sign of a progressive nation. If the aforementioned measures are not implemented expeditiously, then the unfortunate

tragedy which happened in the present case is bound to repeat itself since there cannot be a curb on outdoor excursions for school and college students as well as the public at large especially to beaches and other water fronts.

30. In the present case, record shows that a Public Interest Litigation (PIL) was revived before this Court within a fortnight of this very incident in question. This Court expressed the view that the State Government should consider formulating a comprehensive policy concerning beach safety and related issues. It appears that a Government Order concerning beach safety was issued in 2006 and that a PIL was filed as far back as in 2010, which was revived following the present incident. Petitioner therein suggested that an effective warning system should be put in place to alert visitors about high tides and other potential dangers, alongwith implementation of appropriate preventive measures to avoid such accidents.

31. The Court also observed that it was necessary to establish a dedicated cell to monitor the implementation of the earlier Government Order. It was further suggested that the State Government shall formulate appropriate measures to provide adequate facilities and ensure the safety of visitors, particularly considering that tourism is a major industry worldwide. The Court was assured that the Government would formulate a new scheme and apprise the Court of

the steps taken in that regard. However, it appears that the aforesaid PIL filed in th year 2010 was disposed of on 13.11.2019 with the Court observing that in view of several orders passed by it and the Affidavit filed by the Government, it was satisfied that the necessary steps had been taken and there was no assistance forth coming from the Petitioner. Accordingly, the PIL was disposed of by order dated 13.11.2019.

32. It is pertinent to note that, very recently, 8 students from a group comprising 46 students and teachers from a private Educational Coaching Institution who had gone on an educational picnic to a beach in Raigad, misjudged the high tide and the strong sea currents, ventured into the sea and were swept away. It is unfortunate that every time a tragedy involving the loss of multiple lives occurs, it is followed by widespread public outcry. However, effective implementation of safety norms and other preventive measures continue to remain a matter of serious concern. I am of the opinion that deployment of life guards on all beach fronts is equivalent to appointment of firemen who are in employment of the fire brigade. They both serve the same purpose. We cannot have a knee jerk reaction after every mishap. A copy of this judgment shall be sent to the Chief Secretary of the State Government, who is requested by this

Court to consider taking / fortifying measures which are discussed and suggested hereinabove in the larger interest of the Society.

33. It is seen that the Applicants cannot be held criminally negligent for an unforeseeable event occurring beyond their direct control or operational purview. It is seen that mere occurrence of an accident resulting in death or the alleged absence of ordinary care does not by itself retrospectively render the Applicants liable under Section 304A of the IPC. It is seen that certain circumstances and events may arise beyond the control of the persons concerned, and in the present case, the circumstances indicate that the death of the 14 students cannot be said to have been directly and proximately caused by any specific negligent act or omission on the part of the Applicants. None of the Applicants would desire any of the students accompanying them for the picnic to get hurt at the least. Consequently, it is seen that the Applicants cannot be held criminally liable for the said incident. Furthermore, it is seen that there is no material on record to establish any gross or high degree of negligence on the part of the Applicants.

34. Therefore, *prima facie* in absence of any material to suggest that Applicants are guilty of the alleged offense with which they are charged, I am inclined to accept the submissions advanced by Mr. Mundargi and Mr. Biradar and determine the present Applications affirmatively.

35. Hence, in view of the aforementioned findings and observations, all Criminal Applications are allowed as herein under:-

(i) **Criminal Application No.493 of 2016 is allowed in terms of prayer clause (a) which reads thus:-**

"a) Quash and set aside FIR bearing C. R. No. 24/2016 of Murud Police Station, Tehsil – Murud, District – Raigad for offence under Section 304A r/w. 34 of Indian Penal Code in the interest of justice."

(ii) **Criminal Application No.568 of 2016 is allowed in terms of prayer clause (a) which reads thus:-**

"a) Quash and set aside FIR bearing C. R. No. 24/2016 of Murud Police Station, Tehsil – Murud, District – Raigad for offence under Section 304A r/w. 34 of Indian Penal Code in the interest of justice."

(iii) **Criminal Application No.569 of 2016 is allowed in terms of prayer clause (a) which reads thus:-**

"a) Quash and set aside FIR bearing C. R. No. 24/2016 of Murud Police Station, Tehsil – Murud, District – Raigad for offence under Section 304A r/w. 34 of Indian Penal Code in the interest of justice."

(iv) **Criminal Application No.975 of 2016 is allowed in terms of prayer clause (a) which reads thus:-**

"a) Quash and set aside FIR bearing C. R. No. 24/2016 of Murud Police Station, Tehsil – Murud, District – Raigad for offence under Section 304A r/w. 34 of Indian Penal Code in the interest of justice."

36. All four Criminal Applications viz., Application Nos.493 of 2016, 568 of 2016, 569 of 2016 and 975 of 2016 are allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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