

Death an over-hasty  
act. negligence is the



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Death by Negligence: We know that all acts resulting in death are not culpable homicide. In all culpable homicide—whether amounting to murder or not so amounting—a guilty intention or knowledge is an essential element. Death alone is not culpable homicide. Where the accused who was in the midst of a drinking party in order to manifest his over anxiety to show all hospitality to a newly arrived Mahant and in order to detain him for the night against the latter's wishes, fired a shot without aiming thereby causing injuries on the chest of Mahant from which the latter died, the Supreme Court held, (1) that on the materials on record it could not be proved that he had any intention of firing at the Mahant.

He seems to have pulled the trigger in a state of intoxication in order to see that by the gun-fire the Mahant was prevented from leaving his place, (2) it was a wholly rash and negligent act on his part or at the most was an act which would amount to manslaughter. It could not amount to murder, (3) he was guilty of an offence under Section 304-A. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. Rash or negligent act is an act done not intentionally or designedly. A rash act is primarily an over-hasty act.

Negligence is the breach of duty caused by omission to do something which a reasonable man is guided by those considerations to regulate the conduct of human affairs. Rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. Negligence is the genus of which rashness is a species. The rash or negligent act means the act

which is the immediate cause of death not an act or omission which can be a remote cause of death.

If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death of some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Section 304-A by its own definition totally excludes the ingredients of Section 299 or Section 300, I. P. C.

Doing an act with the intent to kill a person or knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide. When intent or knowledge as described above is the direct motivating force of the act complained of Section 304-A has to make room for the grave and more serious charge of culpable homicide. The earlier part of clause (4) to Section 300 refers to the case where the act of the accused is so imminently dangerous that it must in all probability cause death or such bodily harm as is likely to cause death. The act of cleaning a loaded revolver cannot by itself be regarded as an act of such a nature as must, in all probability, cause death even if the accused, a Sub-Inspector of Police may be safely presumed to know the dangerous character of a loaded revolver having no safety catch attached to it. It was held that the revolver went off due to rash and negligent handling and fell under Section 304-A, I. P.

C. Death may result from acts where there is no desire to cause death. Such are the cases where death is caused by rashness or negligence. A rash act is primarily an over-hasty act and is thus opposed to a deliberate act or an act

done without due deliberation. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, or knowledge that such injury, will probably be caused. Criminal negligence is acting without the consciousness that illegal mischievous effect will follow but in circumstances which show there that the actor has not exercised the caution incumbent upon him and that if he had he would have had the consciousness. Rashness and negligence are inter-related as different forms of the same phenomenon.

Negligence is of two kinds—advertent or inadvertent. Advertent negligence is called rashness. Rashness is like intention in that the consequence is foreseen but the difference is that whereas in intention the consequence, is desired or is foreseen as a certainty, in rashness it is foreseen as possible or probable but it is not desired. Dr. Glanville Williams defines recklessness as any determination to pursue conduct with the knowledge of risks involved though without desire that such risk should materialise. The only rule that can be stated in such circumstances is that a risk may be run for a reasonable cause. Since rashness is a kind of negligence, it presupposes a duty to take care.

Death must be the direct result of the rash or negligent act or viewing it the other way round such act must be the proximate or effective cause of the death before we may designate it as death by rashness or negligence. If a pedestrian suddenly crosses a road without taking note of an approaching bus, there is every possibility of his dashing against the bus without the driver becoming aware of it. The bus driver cannot save accident however

slowly he may be driving and therefore he cannot be held to be negligent in such a case.

Where the bus driver received warning from the passenger in the bus that the train (goods) was coming only when he was already on the railway track, after crossing the level crossing gate, which was left open and on seeing the train he drove as fast as he could, in the meantime the train dashed against the bus on the rear side. It was held by the Supreme Court that it could not be said that the bus driver tried to negotiate the level crossing in a spirit of bravado and absolutely 'unmindful of the impending collision'. The bus driver could not be held guilty of criminal negligence merely because he did not stop when the road signal, situated at some distance from the crossing, wanted him to stop. The appellant was driving the bus at a speed not exceeding 20 miles per hour. Now a speed of 20 miles per hour on a road like Rohtak Road which is 42 ft.

wide, cannot be said to be fast or excessive. But there can be no doubt that the appellant was grossly negligent in that he did not look at his right even though he was approaching a cross road and failed to notice the deceased who was coming from his right and crossing the road. It is indeed difficult to imagine how the appellant could have possibly failed to notice the deceased coming from his right. This was culpable negligence on the part of the appellant. Their Lordships of the Supreme Court were therefore satisfied beyond doubt that the death of the deceased was caused on account of negligent driving of the bus by the appellant.

Accused driver running over deceased when deceased trying to cross road.

Accused not making attempt to save deceased by swerving to other side when there was sufficient space. Conviction under Section 304-A held proper.