

Sushil Ansal Vs. State Through Cbi

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Court : Delhi

Decided On : Sep-11-2001

Reported in : 2002CriLJ1369; 95(2002)DLT623; 2002(63)DRJ585

Judge : R.C. Chopra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 36, 227, 228, 304, 304-A, 337 and 338; [Cinematograph Act, 1952](#) - Sections 14; Indian Electricity Rules, 1956 - Rules 29(1), 30(4), 43, 50(2); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161; Cinematographic Rules, 1953; ;Cinematographic (Amendment) Rules, 1981

Appeal No. : Crl. R. 175, 238 and 270/2001 and Crl. M. 339/2001

Appellant : Sushil Ansal;nirmal Singh Chopra;association of Victims of Uphaar Tragedy

Respondent : State Through Cbi;state Through Cbi;sushil Ansal and ors.

Advocate for Pet/Ap. : Harish Salve, Solicitor General,; R.N. Trivedi, Additional Solicitor General,;

Disposition : Petitions dismissed

Judgement :

R.C. Chopra, J.

1. Morning of June 13, 1997 was as bright as ever but the evening turned out to be the darkest for those whose kith and kin had gone to the matinee show at Uphaar Cinema. A fire in a transformer emitted thick smoke and toxic gases, which asphyxiated 59 patrons to death besides injuring over 100 in the balcony of the cinema. The agony, grief and the sorrow of those who lost their nears and dears in this tragedy can never be adequately compensated but the law enforcement agencies and justice delivery system come under a heavy duty to find out the cause of the incident, persons responsible for the cause and then proceed against them all in accordance with law.

2. In CrI. R. 238/2001 filed on behalf of petitioner Sh. Sushil Ansal former Managing Director of Green Park M/s. Theatres Associated Private Limited, which had built and established Uphaar Cinema, the prayer is to discharge him of the charges framed against him by the trial Court under Sections 304-A, 337, 338 read with Section 36 of Indian Penal Code and Section 14 of [Cinematograph Act, 1952](#). In CrI. R. 175/2001 also filed by Sh. N.S. Chopra, Manager of Uphaar Cinema, the prayer is for discharge. He has been charged by the trial Court under Section 304 read with Section 36 IPC. CrI. R. 270/2001 has been filed by Association of Victims of Uphaar tragedy with a prayer to charge Sh. Sushil Ansal and Sh. Gopal Ansal under Section 304 IPC also in addition to the charges already framed against them.

3. I have heard Sh. Ram Jethmalani, Senior Advocate on behalf of petitioner Sh. Sushil Ansal, Sh. R.K. Naseem, Advocate for petitioner Sh. N.S. Chopra and Sh. K.T.S. Tulsi, Senior Advocate on behalf of the Association of Victims. Sh. Harish Salve, Solicitor General of India has made submissions on behalf of the State represented through Central Bureau of Investigation.

4. According to the prosecution, the incident resulting in the death of 59 and injuries to about hundred patrons watching a movie in the matinee show of Uphaar Cinema had taken place on account of a fire in Delhi Vidyut Board transformer at about 5.00 p.m. The oil started leaking from the transformer and spread towards the nearby open area where vehicles were being parked unauthorisedly. The vehicles which caught fire, produced dense smoke and toxic gases which entered

the cinema building primarily on account of the fact that an authorised wall had been raised near this open space. This wall obstructed the flow of the smoke and gases into the open. It is also alleged that the other transformer which was supplying electricity to the cinema was switched off as a result of which there was total darkness in the balcony. The patrons were unable to find their way out as the emergency lights were not working, P.A. system was not operational, required gangways leading to exit doors were not available and out of the two stair-cases, one was full of smoke and gases and the other had obstructions which made it impossible for the patrons to escape. No help came from the cinema staff or management. Some of the patrons made frantic calls on their mobiles to their families for help but none could come and slowly many of them became unconscious or dropped dead because of suffocation.

5. It is alleged that the petitioner Sh. Sushil Ansal was the person who was primarily looking after the functioning of the cinema and as such, he was guilty of gross negligence in the matter of compliance of rules and regulations relating to the safety of the patrons. It was during his tenure only that this high voltage transformer was put up in the cinema building knowing fully well that its presence in the cinema complex was hazardous. However, it was allowed to be installed for the reason that it was to supply electricity to some other parts of the cinema building where the tenants of the petitioner's company were the consumers. It is also alleged that various permissions and renewals of license of the cinema year after year were on account of collusion between some public servants and management and as such, the cinema management was being obliged by ignoring violations, draw-backs and shortcomings in the matter of public safety.

6. Learned Trial Judge vide orders dated 27.2.2001 ordered framing of charges against the petitioner Sh. Sushil Ansal holding that prima facie case under Sections 304-A, 337 read with Section 36 IPC as well as Section 14 of [Cinematograph Act, 1952](#) was made out against him. It was held that a charge under Section 304 read with Section 36 IPC existed against the petitioner Sh. N.S. Chopra. Learned trial Judge held that the transformer in question was installed during the tenure of and on the request of the petitioner Sh. Sushil Ansal and certain deviations were also made in the building as well as seating arrangements

in the balcony during his tenure. According to learned trial Judge, installation of the transformer, which had caught fire and non-adherence of the rules and regulations made out a prima facie case against him. Regarding petitioner Sh. N.S. Chopra, learned trial Judge held that not only that he was responsible for various deviations and violation of the rules, he was present also at the spot at the time of the incident but had failed to provide any help to the persons trapped in the balcony having knowledge that his acts of omission and commission were likely to cause death or injuries to persons trapped in the balcony.

7. Sh. Ram Jethmalani, Senior Advocate arguing on behalf of the petitioner Sh. Sushil Ansal has assailed the impugned order of charge on the following grounds:-

(a) That 'causa causans' for the death and injuries to the patrons in the balcony of Uphaar Cinema was the fire in the transformer of Delhi Vidyut Board over which the management of Uphaar Cinema had no control and in fact they were prohibited from meddling with it in any manner whatsoever. It is argued that the management of the cinema was neither concerned with the upkeep or repair of this transformer nor was under any duty as per the contract or the statute to maintain it. This transformer was thrust upon cinema management and was not supplying electricity to it. It is submitted that since the fire in this transformer was the direct and immediate cause of the incident, the petitioner Sh. Sushil Ansal cannot be held liable for the incident in question.

(b) That the cinema was always run by its management with the permission and under license from the authorities concerned and even on the date of the incident, there was a valid license with the cinema owners under the [Cinematograph Act, 1952](#). There was no violation of Rules or Bye-laws and every step was with the permission of authorities concerned. If the license was being renewed inspire of minor deviations in the building or in the seating arrangements in the balcony, the cinema management as well as the petitioner cannot be blamed. It is also argued that the management of Uphaar Cinema or the petitioner or for that purpose no prudent man could ever assume that minor deviations and violations of rules and regulations would result in such a tragic incident.

(c) That on the date of the incident, petitioner Sh. Sushil Ansal was in no way connected with the Company running Uphaar Cinema and was neither a person in charge of or responsible to the Company nor was the occupier or licensee of the cinema and as such, his prosecution is without any basis.

8. Learned counsel for the petitioner Sh. N.S. Chopra has argued that no case at all is made out against this petitioner and as such, the charges framed against him are groundless and unsustainable.

9. Sh. K.T.S. Tulsi, Senior Advocate appearing on behalf of the Association of Victims of Uphaar tragedy has submitted that Section 304 IPC is attracted against accused Sh. Sushil Ansal and Sh. Gopal Ansal and as such, they should be charged under Section 304 IPC also in addition to the charges already framed against them. Learned counsel submits that the acts of omission and commission on the part of these two were so grave and serious that, at least prima facie, it should be presumed that they had the knowledge that in case a fire took place in Uphaar Cinema, the patrons would have no rapid escape facilities. He also submits that corporate veil has to be lifted to see that Sh. Sushil Ansal was the person running and controlling this cinema on the date of incident as it was a unit of his family. It is also submitted that the trial Court on the basis of the material placed on record, had sufficient grounds to presume that Sh. Sushil Ansal and Sh. Gopal Ansal, who were looking after the management of Uphaar Cinema, had the knowledge that their acts of omission and commission were highly dangerous in nature and posed a substantial threat to the lives of those, who were visiting the cinema for watching movies.

10. Shri Harish Salve, Solicitor General of India arguing on behalf of CBI contends that a prima facie case under Section 304-A read with Section 36 IPC is made out against the petitioner Sh. Sushil Ansal. He submits that this Court should avoid interfering with the impugned order passed by learned trial Judge so as to interdict the trial, which is still at an early stage. According to him, the impugned order passed by learned trial Judge is neither perverse nor it can be said that there is no material on record for proceeding against the accused. It is argued that at this stage, the Court is not required to find out whether the accused can be held guilty

or not and even on the basis of a strong suspicion, charge can be framed. No detailed or elaborate inquiry is required to be undertaken nor the probable defense of the accused has to be looked into at this stage. Learned Solicitor General opposes the prayer made by petitioner Shri N.S. Chopra also for his discharge.

11. While considering submissions for exercise of revisional powers against an order of framing charge the High Court must remind itself that no interference in the order of trial Court would be called for unless some glaring injustice is staring in its face. The view taken by the trial Court on the question of charge should not be substituted by the Revisional Court with its own if the view taken by the Trial Court is such that could possibly be taken under the facts and circumstances of the case. In a recent judgment of the Supreme Court of India titled *Smt. Om Wati and Anr. v. State, through Delhi Administration and Ors.* reported in AIR 2001 SCW 1230. His Lordship Hon'ble Mr. Justice R.P. Sethi speaking for the Bench cautioned the High Courts in the following words:

'We allow this appeal by setting aside the order of the High Court and upholding the order of the trial Court. We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law.'

12. In *Stree Atyachar Virodhi Parishad v. Dalip Nathumal Chordia and Anr.* : [1989]1SCR560 , the Apex Court had laid down the parameters within which the revisional courts are expected to remain while examining orders framing charge under Section 228 of the Code. The law as to under what circumstances the Courts should pass discharge order under Section 227 of the Code and on what material an order for charge should be passed under Section 228 of the Code has been propounded in various judgments of the Apex Court, but the leading judgments on this point are *Century Spinning & . v. The State of Maharashtra* , : 1972 CriLJ329 , *State of Bihar v. Ramesh Singh* , : 1977 CriLJ1606 , *Union of India*

v. Prafulla Kumar Samal and Anr., : 1979 CriLJ154 , Niranjan Singh Karam Singh Punjabi, Advocate v. Jitendra Bhimraj Bijja and Ors., : 1990 CriLJ1869 , Stree Atyachar Virodhi Parishad v. Dalip Nathumal Chordia and Anr. (supra), State of Maharashtra, etc. v. Som Nath Thapa etc., : 1996 CriLJ2448 and Satish Mehra v. Delhi Administration and Anr., : (1996)9SCC766

13. The principles that emerge governing orders under Sections 227 and 228 of the Code are that only in those cases where a Judge is almost certain that there is no prospect of the case ending in a conviction, and is of the view that the time of the Court need not be wasted by holding a trial, an order of discharge may be passed under Section 227 of the Code. However in case there is a strong suspicion, founded upon some material available on record, which leads the Court to form a presumptive opinion as to the commission of the offence by an accused, the framing of the charge would be warranted. No detailed or elaborate enquiry is required to be undertaken at this stage by delving deep into various aspects of the matter to find out as to whether an accused can be held guilty or not. Probable defense of an accused is not to be looked into nor the probative value of the material on record has to be examined. In nut shell an order of discharge under Section 227 of the Code would be warranted only in those cases where the Court is satisfied that there are no chances of conviction of an accused and the trial would be an exercise in futility. In all other cases, an order for charge under Section 228 of the Code has to be passed so as to give the prosecution an opportunity to lead evidence and establish the allegations.

14. Shri Ram Jethmalani, Senior Advocate arguing on behalf of the petitioner Shri Sushil Ansal has argued that no case for framing charge against Shri Sushil Ansal is made out in view of the fact that 'causa causans' for the deaths and injuries to patrons sitting in the balcony of Uphaar Cinema was the fire in a transformer, which belonged to Delhi Vidyut Board, the maintenance of which was the sole responsibility of Delhi Vidyut Board. According to him, the evidence collected during investigations has shown that on the morning of 13.3.1997 also there was a fire in this very transformer and the officials of Delhi Vidyut Board had carried out certain repairs, which were not up to mark and as such, there was again a fire in the evening. The fire spread up to the open area where vehicles were parked. The

smoke and fumes reached up to the balcony and asphyxiated the patrons sitting there. Learned counsel argues that for invoking Section 304-A IPC, the prosecution has to show that some rash or negligent act, attributable to the petitioner, was the direct, proximate and efficient cause and his negligence alone was the 'causa causans'. It is submitted that 'Causa Sine Qua Non' would not be enough to foist any criminal liability upon an accused.

15. He also submits that to bring a person within the four corners of Section 304-A IPC, negligence or carelessness on his part has to be of 'gross character'. He argues that running of a cinema was neither an illegal nor per-se a rash or negligent act. It was being run under a valid license, which was being renewed by the Authorities every year after carrying out inspections to ensure substantial compliance of rules and regulations. The management of the cinema or for that purpose no prudent man could even imagine that the Delhi Vidyut Board transformer installed in a separate room on the ground floor could lead to such a disaster. It is submitted that neither the petitioner nor anybody else in the management of the cinema had and duty or authority to oversee the maintenance of Delhi Vidyut Board transformer and had to rely solely upon the skill and expertise of DVB employees. It is also submitted that minor deviations or violations of the building bye-laws or Cinematograph Act and rules there under would not be sufficient to impose criminal liability upon the management of the cinema or the petitioner as mere failure to exercise little care here or there or slight failure in duty or minor deviation from a prudent conduct are not sufficient for fastening criminal liability. According to him the conduct of an accused has to be shown in utter, flagrant and wanton disregard for the safety of others, who might reasonably be expected to be injured thereby. thereforee, the negligence has to be gross in character showing complete indifference, wantonness or recklessness. He also submits that every violation of a statute does not constitute criminal negligence. Unintentional violation of a prohibitory statute or regulation unaccompanied by recklessness towards probable consequence of a dangerous nature can not constitute criminal responsibility.

16. In support of his arguments, learned counsel for the petitioner relies upon Articles 106 and 306(a) and (b) of Corpus Jurisdiction Secundum. He also relies

upon the judgments in *Green v. Fibreclass Ltd.* (1958) 2 ALL E.R. 521, *R v. Adomako* (1994) 3 ALL ER 79, *John Oni Akerele v. King*, AIR (30) 1943 P C 72, *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra*, : [1965]2SCR622 , *Suleman Rahiman Mulani and Anr. v. State of Maharashtra*, : 1968 CriLJ1013 , *Bhalchandra and Anr. v. The State of Maharashtra*, : 1968 CriLJ1501 and *Ambalal D. Bhatt v. The State of Gujarat*, : 1972 CriLJ727 .

17. Sh. Harish Salve, Solicitor General of India has vehemently argued that direct and efficient cause for the deaths and injuries to the patrons in the balcony of Uphaar cinema was not merely the fire in Delhi Vidyut Board transformer but absence of rapid dispersal facilities also from the balcony. He submits that on account of various acts of omission and commission, violation of rules and bye-laws meant for safety of general public, fire in the Delhi Vidyut Board transformer spread up to the parked vehicles nearby. When the vehicles caught fire, thick smoke and toxic gases could not disperse towards the open area on account of unauthorised construction of a high wall near the said area. Due to chimney effect, the said smoke and toxic gases got sucked into the auditorium and balcony and absence of adequate and sufficient exist facilities prevented the patrons from coming out of balcony resulting in deaths and injuries to so many. Learned Solicitor General points out that callous indifference and gross negligence in regard to the maintenance and up-keep of Delhi Vidyut Board transformer by Delhi Vidyut Board officials and cinema management resulted in the fire, absence of a small wall outside the transformer room allowed the transformer oil to spill out and reach up to nearby open space where vehicles were being parked unauthorisedly and when the vehicles caught fire, thick smoke and toxic gases entered the balcony from where the patrons found no way to escape on account of one stair-case being choked on account of smoke and gases and the other stair-case being not available on account of various obstructions caused by the cinema management and the owners of the building. The closure of a gangway and an exit door on the right side of the balcony, non-availability of public address system, non functioning of emergency lights, absence of fire alarm system also contributed to the tragedy.

18. Learned Solicitor General argues that the permissions and licenses being granted to the management of the cinema year after year were collusive in as much as there is sufficient material on record to suggest that these were being issued inspire of deviations, shortcomings and violations. He also submits that Sh. Sushil Ansal was one of those actually managing the cinema and as such, he cannot escape his liability on the ground that he was not connected with the Company M/s. Ansal Theatres and Club Hotels Limited. It is submitted that he was attending the meetings of the Board of Directors, operating bank accounts, visiting the cinema regularly and issuing instructions to the staff in regard to the running of the cinema. The staff used to call him 'Maalik' and looked to him for orders.

19. Learned Solicitor General contends that the material on record shows that public servants concerned with grant of licenses and permissions were acting hand in glove with the management of Uphaar cinema as a result of which license was being renewed from time to time without ensuring compliance of the rules relating to the safety of general public. A partition wall near the parking area, which built in violation of the building bye-laws was the cause of obstructing the discharge of smoke and gases towards open areas and had this wall not been there, the smoke and gases would not have entered the cinema building. The obstructions in second stair-case in violation of the rules had also resulted in preventing the escape of the patrons from balcony. A wooden dispensary had been constructed in this stair-case, which was not only an obstructions, but could even be a cause for accelerating the fire. The closure of one gangway and exit door on the right side of the balcony, absence of emergency lights, absence of public address system and fire alarm system contributed in their own ways in converting the cinema hall into a black hole where gullible spectators got trapped. Even the gate-keeper on duty was found missing leaving the patrons groping in dark. It is contended that the permissions and licenses were prima facie collusive as the public servants were more than willing to oblige the cinema management at the risk of the lives and safety of those, who were visiting the cinema. Referring to Rules 29(1) and 30(4) of the Indian Electricity Rules, 1956, it is submitted that the cinema management was also under a duty to ensure that the Delhi Vidyut Board transformer was maintained properly. There was clear violation of Rule 43 as well as 50(2) also. Learned Solicitor General relies upon an inspection-cum-scrutiny

report dated 11.8.1997 prepared by the Engineering Department of M.C.D. as well as on the statement of P.W.46 Dalip Singh to argue that there were large scale violations of the building bye-laws, which contributed to the tragedy. The report and the statement of this witness under Section 161 Cr.P.C. show that one stair-case had obstructions, the area of the basement had been reduced by raising partition walls as a result of which unauthorised parking was being done outside in the open, a dispensary had been put up behind the transformer block on some portion over the ramp and a wall which could be only 3 feet high as per the sanctioned plan, had been raised up to the height of the first floor which obstructed the flow of smoke and gases into the open area. The exhaust fans in the transformer room were not opening towards the open space, but towards the basement and for carving out some office space, some portion around the lift well in the stair-case had been converted into an office space. The report dated 16.7.1997 by Additional Chief Engineer, Delhi Vidyut Board also points out various deficiencies and violations. Cinematographic Rules, 1953 and 1981 were also being violated with impunity by depriving the patrons of one stair-case, by reducing the number of exit doors and gangways, by non-availability of exit signs which should have been visible in the dark also, by non-availability of public address system and emergency lights etc. All these violations and deviations had the effect of depriving the patrons of safe escape opportunities at the time of the incident. Learned Solicitor General, therefore, submits that the arguments advanced by learned counsel for the petitioner Shri Sushil Ansal that no charge under Section 304-A could be framed against him as 'causa causans' was only the fire in Delhi Vidyut Board transformer and there was nothing to show that the petitioner or the management of the cinema was grossly negligent, cannot be sustained at least at this stage.

20. To appreciate the submissions made by learned counsel for the parties, the Court has to focus its attention, of course within the parameters prescribed for a revisional Court, to the question of 'causa causans', violations of statutory rules meant for public safety, effect of permissions and renewal of license of Cinema up to the date of incident and individual liability of the petitioners before the Court. In Privy Council judgment reported in *John Oni Akerele v. The King* AIR 1943 P C 72, Lord Porter while dealing with a charge of negligence observed that only gross

negligence could constitute a criminal offence and neither a jury nor a Court could transform the negligence of a lesser degree into gross negligence merely by giving it that appellation. He, however, hastened to add, quoting from Halsbury's Laws of England, as to what amount of negligence is to be recorded as gross is the question of degree depending on the circumstances of the each particular case. In *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra*, : [1965]2SCR622, their Lordships of Supreme Court while discussing the essentials of Section 304-A IPC observed that the death should be the direct or proximate result of the rash or negligent act. Relying upon *Emperor v. Omkar Rampratap*, 4 Bom LR 679, they quoted Sir Lawrence Jenkins who had interpreted Section 304-A to hold that the act causing death must be 'causa causans' and not merely 'causa sine qua non'. The appellant before the Court who was the owner of a factory in which fire took place resulting in the death of seven workers and injuries to others was acquitted holding that the deaths in the case were not direct result of a rash or negligent act on his part. The emphasis was on the principle of 'causa causans' i.e. the requirement of the rash or negligent act being the direct or proximate cause of death. In : 1968 CriLJ1013 also their lordships were of the view that direct nexus of the death of a person to the rash and negligent act of the accused was essential. In *Ambalal D. Bhatt v. The State of Gujarat* : 1972 CriLJ727, the Apex Court again had the occasion to consider the question of 'causa causans' and came to the conclusion that in a prosecution for an offence under Section 304-A IPC, the Court has to examine whether the alleged act of the accused was the proximate and efficient cause of the death without intervention of others negligence. It was reiterated that the act causing death should be the 'causa causans' and not merely 'cause sine qua non'. In para 11 of the said judgment the importance of 'cause interventions' was also highlighted, which may break the chain of causation so as to render the act not the immediate cause.

21. While discussing criminal responsibility Article 306 of Corpus Jurisdiction Seconded unequivocally says that negligence is not criminal unless it is culpable and in order to foist criminal unless it is culpable and in order to foist criminal responsibility there must be negligence of greater degree, which is gross. In clause (B), it is further stated that while every violation of a statute does not constitute criminal negligence but intentional, willful or wanton violation of a statute

designed for the protection of human life or limb may give rise to criminal liability. While dealing with fire caused by negligence, it is added that in a statute providing that any person who recklessly or negligently sets fire to any woods, lands or marshes so as to cause loss or injury to another shall be guilty of misdemeanour.

22. In the case of *Bhalchandra and Anr. v. The State of Maharashtra*, : 1968 CriLJ1501 there was an explosion in a factory manufacturing fire works causing deaths and injuries to many. In spite of absence of direct evidence of immediate cause the proof of storage of prohibited highly sensitive explosives was considered sufficient for slapping a charge under Section 304-A IPC against the license-holders. Their Lordships relied upon the case of *Balachandra Wamon Pathe*, CrI. Appeal No. 62/1965 to hold that criminal negligence is, 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 particular which having regard to all the facts and circumstances, out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. Their Lordships were of the view that the manufactures had displayed a high degree of negligence by allowing or causing to be used explosives of sensitive composition in the manufacturing of fire works which must have been the cause of explosion.

23. In *Keshub Mahindra v. State of M.P.*, 1996 SCC (Cri.) 1124 Their Lordship of the Apex Court while dealing with the plea of the Chairman of Union Carbide, from the factory of which at Bhopal MIC gas had leaked killing and maiming thousands, had occasion to deal with various questions relating to criminal negligence, liability of those who occupy senior positions but are not present at the spot and considerations relevant at the stage of charge. In regard to the prayer for quashing the criminal proceedings on behalf of accused No. 2, who was Chairman stationed at Bombay and was not present at the factory premises at the time of the incident, it was observed that prima facie the accused being in the apex position and at the helm of the affairs, the question as to whether he actually was liable or not will be a question of evidence and proof to be resolved at the stage of trial. It was held that the question as to whether the accused was guilty of the charge or not will depend upon the evidence that may be led at the stage of trial and not at the stage

of charge in as much as only prima facie case has to be found at the said stage. Their Lordships repelled the argument against the applicability of Section 304-A IPC against the accused by relying upon the case of *Ambalal D. Bhatt v. The State of Gujarat*, : 1972 CriLJ727 , referred to above, and held that there were structural defects as well as operational defects in the working of the plant which resulted in a grim tragedy and as such Section 304-A IPC could be invoked against the Chairman even. The main consideration which weighed with the Court was that at the stage of framing charge it would be pre-mature for the Court to hold that no case of culpable negligence or rashness was made out and the trial should be nipped in the bud. The judgment of Apex Court in *Suleman Rahiman Mulani* (supra) was considered and it was held that the decision was of no avail to the appellant for the simple reason that the question of proof of rashness or negligence would arise at the stage of trial after full evidence is led by the prosecution and even by the side of the accused, if at all they chose to do so, and in the light of that evidence the question would arise as to whether the charge as framed is made out or not.

24. According to *Corpus Jurisdiction Secundum*, *Oxford Dictionary of Law* and *Webster's Dictionary of Law* 'causa causans' means the primary, principal, original or the immediate cause leading to a particular consequence. In the Privy Council case of *John Oni Akerele v. King* (supra), *Emperor v. Ombir Ram Pratap*, 4 Bom L.R. 679 and *Kurban Hussain Mohamedalli Ranwalla's case* : [1965]2SCR622 , it has been held that for invoking Section 304A of the IPC, the Act causing the death must be the 'cause causans' and not merely 'causa sine qua non'. In *Ambalal B. Bhatt's case* (supra) the Apex Court once again reiterated that in a prosecution for an offence under Section 304-A IPC, the Court has to examine as to whether the alleged act of the accused was or not the proximate and efficient cause of the death without intervention of others negligence. 'Cause interventions' which may break the chain of causation was held to be rendering the act not the immediate cause.

25. However, sometimes there may be more than one factor contributing to the damage and the ultimate result may be on account of interplay of several factors. When causes are in a chain the last and nearest to the occurrence may be treated

as proximate and efficient cause but there may be cases where the causes are not in a chain but like a net interlinked, interwoven, overlapping and so interdependent on each other that without one or the other, the ultimate incident could not have taken place. The entire net then is the 'causa causans'. In the case in hand the material as laid before the Court shows that the incident leading to the deaths of 59 persons and injuries to about 100 was triggered by a fire in a DVB transformer but that was neither the primary nor sole cause resulting in deaths and injuries. The fire in the transformer on account of the fall of cable on transformer was because the cables were hanging loosely and had not been firmly affixed. There were no protective relays even in the transformer room. If these relays had been there, the power supply would have got immediately tripped. The fall of a heavy cable on the radiator fin resulted in the leakage and spilling of the radiator oil which went up to the unauthorisedly parked vehicles nearby. The vehicles parked in the said area caught fire and started emitting thick smoke and toxic gases. The existence of an unauthorised high wall near the parking area obstructed the escape of smoke and gases towards open area and as such the smoke and gases turned towards the cinema auditorium and balcony. The non-availability of rapid dispersal facilities in the balcony on account of absence of emergency lights, public address system, fire alarm system, adequate number of gangways leading up to exit doors and non-availability of the second stair-case converted the balcony into a mouse-trap. Inspire of their efforts and anxiety to escape many of those who were in the balcony or the foyer outside balcony could not find their way to the ground floor or the roof of the cinema and as such got asphyxiated to death. It, therefore, cannot be said that the fire in the DVB transformer alone was the cause of the death and injuries to the patrons in the balcony. It appears, at least prima facie, that the 'causa causans' in this case consisted of fire in the DVB transformer, absence of rapid dispersal facilities in the balcony and various other factors enumerated above. In case there had been no fire in the DVB transformer, no spillage of oil up to vehicles, no wall obstructing the smoke and gases and no obstructions in rapid dispersal from the balcony no death or injury would have been caused to any one. Thus, it is clear that in the present case 'causa causans' consisted of a number of causes and they all contributed to the tragedy in equal proportion. All these factors were interwoven, interlinked and interplayed as one

'causa causans' for the death and injuries to those who were trapped in the balcony of cinema. The tragedy was thus a conjoint and cumulative effect of all these factors. The fire in DVB transformer alone, therefore, was not the 'causa causans'.

26. Those who establish and run public places are expected to exercise a very high degree of care for the safety of those who visit such places believing that everything required to be done for their safety and protection is in place. It is absolutely criminal to take any chance in the matter of public safety and betray the trust and confidence of unsuspecting innocent public. Foresee ability of the risk is always a relevant factor to be considered. The cinema management ought to have foreseen that in the event of some untoward incident the patrons in the balcony had no adequate facilities for safe and quick escape. It would be too liberal an approach for this Court to say that the negligence on the part of the cinema management and others was not so gross as to hold it 'not culpable' especially at this initial stage of trial. In Keshab Mahindra's case (supra) the Apex Court while taking note of structural and operational defects and short-comings in the plant refused to snip the trial at the stage of charge on the ground that the question of proof of recklessness or negligence would arise only at the stage of trial after full evidence is led by the prosecution.

27. This Court need not delve deep into the controversy in regard to violation of various statutes, rules and building bye-laws inasmuch as at the stage of framing charge, neither the trial Court was required to go deep into these issues nor this Court exercising its revisional jurisdiction is required to examine and scrutinise threadbare the contentions raised by the parties in this regard. Prima facie it can be said that a strong suspicion exists against the cinema management that in the matter of running their cinema they were not following the rules and regulations relating to public safety and even some public servants, who were responsible for issuing them licenses and granting various permissions were going out of their way to oblige them. The statement of P.W. 11 Vir Bhan Setia, U.D.C., M.C.D. demonstrates as to how the cinema management was being obliged by some public servants. The violation of Electricity Rules, Cinematograph Act and Building Bye-Laws were primarily responsible for the tragedy. Absence of proper

maintenance of DVB transformer, absence of wall to prevent spillage of radiator oil leading to fire in parked vehicles, a wall obstructing gases and smoke from going towards open, absence of gangways and adequate exit facilities from balcony, absence of second stair case and absence of any help from staff on duty aggravated the situation and directly contributed to the tragedy. Had any help or support come to the patrons at the crucial time, they could have escaped. To the contrary, the patrons in the balcony and in the foyer outside found themselves trapped in pitch darkness not knowing where to go and how to escape. P.W. 89, an employee of cinema had heard the sound of beating of the doors even by patrons trapped in the balcony. Gate keeper Manmohan Uniyal who was on duty was not available to help them in moving out. The mere fact that such a situation developed in the balcony of the cinema in itself is, prima facie, sufficient to hold the accused guilty of gross negligence attracting Section 304-A IPC.

28. In a judgment pronounced by the Apex Court, in C.A. No. 15581/96, on 27.3.2001, their Lordships have observed that the rules meant for public safety and convenience are mandatory in nature and their observance cannot be dispensed with. In Article 306-B of Corpus Jurisdiction Secundum also, it is said that while every violation of a statute does not constitute criminal negligence, an intentional, willful or wanton violation of a statute designed for protection of human life and limb may give rise to criminal negligence. In R v. Adomako 1994 (3) All E R 79, it observed that the question as to whether the defendant's breach of duty amounted to gross negligence or not depends upon the seriousness of breach of duty committed by him. It was also held that breach of duty, which could be characterised as gross negligence gives rise to criminal liability. therefore, all those who create conditions leading to such a disaster must be held responsible for the consequences for the reason that a minor neglect or default individually may appear to be trivial, but when it forms a dangerous combination capable of triggering a major catastrophe, every neglect or default contributing to the disaster has to be treated as culpable. All those concerned with safety and protection of public at large have to realise that sometimes even petty violations pave the way for a major disaster. therefore, without dwelling further on this point, this Court has no hesitation in holding that at this stage, no indepth scrutiny of the rules and regulations and bye-laws is called for, which shall be undertaken by the trial Court

in the course of trial. The entrapment and asphyxiation of the patrons in the balcony of the cinema in the absence of rapid dispersal facilities is in itself sufficient to entertain a strong suspicion of criminal negligence against those concerned with the management of Cinema.

29. Counsel for petitioner Sh. Sushil Ansal has relied upon a judgment *Green v. Fibreclass Ltd.* (1958) 2 All E.r. 521 to contend that the petitioner being a non-technical man could rely upon the trained Electricians and DVB staff only in regard to the maintenance and up keep of DVB transformer and as such, no blame could be attributed to him so as to invoke Section 304A, 337 or 338 read with Section 36 of the IPC. It is true that for certain specialised jobs one has to rely upon experts in the field but in the present case the fire in the DVB transformer alone was not responsible for the incident in question and there were several other factors also which conjointly resulted in causing the deaths and injuries to so many. However, such pleas have to be raised and established in defense only at this stage the Court can not conclude that the petitioner had employed and was dependent upon trained personnel for looking after the transformer in question.

30. Shri Ram Jethmalani, Senior Advocate has further argued that Shri Sushil Ansal, the petitioner, was in no way concerned or connected with the company which was running the cinema and as such no charge ought to have been framed against him. He argues that the petitioner was the Director of the Company, owning the cinema up to 17th October, 1988 only, and thereafter he was never connected or concerned with the running of the Cinema in any capacity whatsoever. According to him the mere fact that the petitioner was a member of the family having shareholding in the company which was running this cinema or that he was attending certain meetings as a special invitee was not enough to initiate criminal proceedings against him. On the other hand Shri Harish Salve, Solicitor General of India and Shri K.T.S. Tulsi, Sr. Advocate appearing on behalf of Association of Victims of Uphaar Tragedy have contended that the prosecution has sufficient material to show, prima facie, that the petitioner Shri Sushil Ansal had not only got the transformer in question installed at a place within the building which was hazardous for the safety of the visitors to the cinema but during his tenure itself numerous deviations were carried out in the building as well as sitting

plan in the balcony which cumulatively resulted in loss of human life and injuries to a large number. According to them he was also one of those who were responsible for creating a death trap in which innocent patrons watching a movie got entrapped and lost their lives. They submit that although the petitioner Sh. Sushil Ansal was not the Director of the Company at the time of occurrence but still the evidence available on record shows that he was the person primarily involved in the running and up keep of the cinema and was regularly visiting the cinema for looking after its management. He was not only participating in the meetings of the Board of Directors but was also issuing instructions to the cinema staff from time to time who used to call him 'MAALIK'. It is argued that in such cases the corporate veil has to be lifted to find out as to who in reality was responsible for running the show. Relying upon a judgment of the Apex Court in D.D.A. v. Skipper Construction Co. (P) Ltd. : AIR 1996 SC2005 , it is submitted that in the present case, as soon as the corporate veil is lifted it becomes clear that petitioner Sh. Sushil Ansal, was, in fact, controlling and running the cinema in question up to the date of incident and most of the hazardous acts and omissions were committed during the period he was the Director of the Company. In Apex Court judgment referred to above, their lordships discussed the concept of peeping behind the corporate veil and came to the conclusion that where corporate character is employed for the purpose of committing some illegality or for defrauding others the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. Para 28 of the said judgment can be quoted with advantage:

'The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejawant Singh and members of his family have cheated several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejawant Singh and family if it is found that these corporate bodies are merely

cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.'

31. In case of a company where most of the Directors are family members the Court may look behind the curtain and if some one else on their behalf is found controlling and managing the affairs of the company such 'some one else' may be taken to task for his acts of omission and commission. It is necessary also for the reason that in certain cases those found on Board of a Company may plead ignorance on account of their absence or lack of participation and those who are actually managing the affairs may ask for absolution for want of connection with the company. thereforee, the corporate cloak cannot be allowed to be used as a device to circumvent and subvert the due course of law. The Court can always look the hand at fault and the person at the helm of affairs. The prosecution has placed on record sufficient material to show that Sh. Sushil Ansal petitioner was authorised signatory of the company up to March, 1997 and the limit was 'up to any amount', he attended certain meetings of the Board as a special invitee, his wife was on the Board of Directors, on 26.6.1995 he signed a cheque even on behalf of Company and he was actually managing and controlling the cinema. He was so much involved in the affairs of the company that the staff of the cinema continued to treat him as 'MAALIK' till the date of incident. Since it is shown that the incident in question was a result of violation of rules, lack of maintenance and absence of due care and caution on his part, he cannot get absolved, atleast at this stage, by simply pleading that he not being the Director or licensee of the Cinema was not responsible.

32. The contention that no charge under Section 14 of the [Cinematograph Act, 1952](#) could be framed against the petitioner Sushil Ansal, cannot be sustained as it is prima facie shown on record that he was the person in charge and was looking after the cinema on behalf of the owner/occupiers and had permitted the cinema building to be used in contravention of the provisions of the Act. thereforee, this Court finds no infirmity with the impugned order framing charges against the petitioner Shri Sushil Ansal under Sections 304-A/337/338 IPC and Section 14 of the [Cinematograph Act, 1952](#).

33. The plea, raised by the petitioner- Sh. N.S. Chopra that no charge under Section 304 read with Section 36 IPC was made out against him, cannot be sustained for the reason that the evidence on record prima facie shows that he was one of the Managers on duty at the cinema at the time of the incident and not only that he was callously indifferent to the compliance of rules, regulations and bye-laws meant for safety of the patrons, he had also failed to extend any help to the patrons trapped in the balcony at the time of incident. He remained aloof and unconcerned during the period when the patrons in the balcony were crying and shouting for help. He did not issue any instructions to any of the staff on duty to help and assist the patrons in moving out of the balcony. He fully knew that on account of non-supply of electricity in the cinema, the balcony had been converted into a black hole and the people were unable to find their way out. It was also well within the knowledge of this petitioner that emergency lights as well as public address system in the balcony were out of order for quite some time and no steps had been taken for repair thereof inspire of reports by the subordinate staff. It was also within his knowledge that in view of the obstructions in the second stair-case the patrons trapped in the balcony would not be able to move out safely. His acts of commission and omission, knowing fully well that deaths were likely to be caused, render him liable under Section 304 IPC. It can be thus prima facie assumed that he had knowledge that deaths were likely to be caused but still remained absolutely unconcerned and unresponsive to the situation which he was duty bound to handle. thereforee, framing of charge under Section 304 IPC against him was justified and calls for no interference by this Court. The revision petition filed by him, thereforee, has no merit.

34. The plea of Association of Victims of Uphaar Tragedy to frame charges under Section 304 IPC against accused Sh. Sushil Ansal and Sh. Gopal Ansal, in addition to the charges already framed against them, cannot be sustained inasmuch as prima facie a case of negligence only is made out against them. The allegations against them gross negligence, wanton carelessness and callous indifference in regard to the up-keep and maintenance of the cinema. Had rapid dispersal facilities been available to the patrons in the balcony, no death or injury could have taken place and as such, this Court is of the considered view that there are no good and sufficient grounds for slapping a charge under Section 304 IPC

against these two accused.

35. In the result, all the three revision petitions are held to be without any merit and are dismissed. The interim orders dated 22.5.2001 stand vacated.

36. Nothing stated herein shall be taken as an expression of opinion on the merits of the case pending before the trial Court as the observations made herein are on prima facie basis and tentative only.

37. The enormity of this tragedy and inapt handling of the situation in its aftermath impels this Court to say that all concerned with establishing, maintaining and supervising public places should take this incident as a 'wake-up call' to ensure that such incidents do not get repeated and if for reasons beyond their control, a mishap happens to take place, they are in a state of preparedness to handle it. Not only that we should develop adequate infrastructure and train man-power for handling mass disasters, we must also prepare in advance blue-prints from National to sub-divisional level detailing the steps required to be taken in a state of emergency and identifying persons responsible for taking those steps without for instructions or directions from any other quarter. Citizens' involvement and training in handling post-disaster situations and earmarking of the specific areas which they shall be required to handle in case of emergency, may save the people in distress the trauma of running from pillar to post for help. Orientation and training in different kinds of rescue operations can be imparted to the younger generation also at senior school and college level. A disaster Management Plan appears to be the need of hour.