



# Jus Corpus Law Journal

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## Case Comment: State Tr. PS Lodhi Colony, New Delhi vs Sanjeev Nanda

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### INTRODUCTION

Citation: (2012) 8 SCC 450

Decided on: 03/08/2012

Bench: Before Deepak Verma and K.S. Panicker Radhakrishnan, JJ

Appellant: State Tr. PS Lodhi Colony, New Delhi

Respondent: Sanjeev Nanda

### FACTS OF THE CASE

On 10th January 1999, a gruesome accident took place at 4 AM, killing 6 people on the spot and injuring 1 individual. The accused- Sanjeev Nanda was driving a black BMW and was accompanied by his friends named Manik Kapur and Sidharth Gupta. The 7 inflicted people (3 policemen and 4 civilians) were standing near the petrol pump at Lodhi road. Meanwhile, the

accused drove his car from Nizamuddin towards Lodhi Road in an extremely rash and negligent manner. The impact of the car on the individuals was so devastating that they flew in the air, and with great force landed on the windscreen of the car. A few amongst the inflicted even landed beneath the car. After this sudden impact, the car came to a sudden halt after banging into the central verge.

The accused exited the car to observe the damage to his car. He then noticed that there were a few individuals beneath the car who were crying for help. However, he was encouraged by his co-passenger Manik Kapur to drive away, despite being cognizant that there were individuals beneath the car who had the possibility of being saved if rushed to the hospital. The individuals beneath the car were dragged for miles and eventually lost their lives in a brutal manner. The accused drove to the house of Sidharth, another co-passenger. On reaching Sidharth's home, his father Rajeev along with two servants Shyam and Bhola hurriedly washed the BMW car to destroy material evidence.

Prosecution Witness 1 - Hari Shankar was an attendant at the petrol pump who witnessed the entire accident. He quickly called his employer who then informed the police.

One person amongst the inflicted seven, named Manoj Malik (Prosecution Witness 2) was the only survivor who did not land under the car. He was injured, however, his body lay strewn near the petrol pump itself. The first person to reach the spot was A.S.I Devendra Singh who rushed Manoj Malik to the hospital. S.I. Kailash Chand found the dead bodies of the three policemen, a number plate which was later reassembled by them, other small parts of the car, skid marks of the tyres of the vehicle, and even a crushed head. The house of Rajeev Gupta was eventually tracked down, as there was an oil trail starting from the crime scene. Later on, these three individuals were located, investigated, and taken for a medical examination. There was a presence of alcohol in their system and slight injuries too.

## **ISSUES**

The underlying issues need to be addressed:

1. Did the accused (Sanjeev Nanda) deserve to be convicted under Section 304 Part B of the IPC, as dictated by the Trial court?
2. Did the accused deserve to be convicted under Section 304 A of the IPC, as dictated by the High court?
3. What could be the possible reasons for Prosecution Witness 1- Hari Shankar and Prosecution Witness 2- Manoj Malik, to turn into a hostile witness, when they were the most crucial link in tying the commission of the offense to the accused individuals?
4. Did the Supreme Court take the right stand in upholding the trial court's decision and reversing the High court's decision?

## RULES

- **“Section 304 of the IPC 1860: Punishment for culpable homicide not amounting to murder”**

Part A: “Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;”<sup>1</sup>

Part B: or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”<sup>2</sup>

- **“Section 304 A of the IPC 1860: 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.”<sup>3</sup>

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<sup>1</sup> Indian Penal Code 1860, s 304 A

<sup>2</sup> Indian Penal Code 1860, s 304 B

<sup>3</sup> s 304 A (n 1)

## ANALYSIS

On hearing the gruesome facts of the case, all fingers would point at the accused Sanjeev Nanda and condemn him for the heinous acts and negligence committed. However, there are many essential elements that have a bearing on this case that are not explicitly mentioned in the facts but are brought to light and are covered in the form of relevant arguments posed by the counsel of the appellant and the respondent.

### **Few relevant arguments mentioned by the Appellant's counsel:**

- The accused failed to possess a valid Indian license for driving a car.
- The accused possessed a substantial level of alcohol in his system once the medical examination was conducted.
- The accused was aware that there were individuals beneath his car but still proceeded to drive away from the scene, thereby mangling their bodies beyond repair.
- He fled from the crime scene and to make matters worse, was passively involved in destroying material evidence.
- He failed on his duty in informing the police and was trying to shield himself.
- He may not have had the mens rea to perform such an act, however, negligence and coupled with the fact that his actions could lead to the death or injury of persons is sufficient to fall under Section 304 Part B of the IPC, resulting in culpable homicide not amounting to murder.

In the case of *"Dalbir Singh vs the State of Haryana"*<sup>4</sup>, drunk driving was severely condemned upon, and a strict warning kept being circulated and promoted to be more aware and alert. Something which was particularly highlighted was that if a person under the influence was found guilty then no protection would be granted to him under the "Probation of Offenders Act, 1958"<sup>5</sup>.

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<sup>4</sup> *Dalbir Singh v State of Haryana* (2000) 5 SCC 82

<sup>5</sup> Probation of Offenders Act 1958

In the case of “*State of Maharashtra vs Salman Salim Khan*”<sup>6</sup>, it was held that due to whatever reason it may be, if the accused was driving a motor vehicle and did not possess a valid Indian driving license, and additionally was under the influence of liquor, he would by default be charged under “Section 304 Part B of the IPC”.

**Few relevant arguments mentioned by the Respondent’s counsel:**

- The respondent had already served imprisonment as ordered by the High Court, and after the period of limitation crept in, he happened to get married and now has a child.
- When he served his time in prison, it was reflected that his actions were positive and good, and this happens to be backed by two NGOs as well.
- On the night of the commission of the offence, it is crucial to note that there was a possibility of poor visibility due to the presence of fog.
- The purpose of sending an individual to jail is to reform them so that they pose no threat to society any longer. The accused has already served time and serving more time would defeat the very essence.
- The victim’s families have been compensated with a generous amount, with a sum of Rs. 65 lakhs in totality.
- It would result in embarrassment and humiliation if he was sentenced to prison time again.

This brings me to the analysis of the prevalent and controversial points:

- **Drunk driving:** The prosecution failed in its duty of conducting a breath analyzer test, and because of such an unprecedented failure, the alcohol levels at the commission of the offence could not be depicted inexactitude. Moreover, an additional investigation led to the fact that the accused drove for 16 km before it dashed in the seven individuals. No doubt the accused may have been a little tipsy and lightheaded but driving for 16 km smoothly and suddenly resulting in an accident is mysterious.

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<sup>6</sup> *State of Maharashtra v Salman Salim Khan* (2004) 1 SCC 525

- **Fog, visibility, and speed:** It is crucial to note that on Lodhi road, there was the presence of fog at 4 AM on a cold winter morning. In addition to this, there was an absence of streetlights, which can be substantiated by Prosecution witness 2- Manoj Malik. However, at the same time, it was still the duty of the accused to stop the vehicle if he was unable to see the road ahead clearly. But there is a possibility that the absence of streetlights along with the presence of fog in Lodhi road contributed to the dashing.
- **Driving without a license:** The accused does not possess a license under the “Motor Vehicles Act, 1988” (MVA, 1988)<sup>7</sup>, and this is because he was pursuing a foreign course abroad and had visited India for a short period. However, the accused possesses a valid driving license in the United States of America (USA). At the same time, there is also a possibility that he may not have been conversant in driving cars in India and opposed to the USA.
- **Duty of drivers, passengers, and bystanders:** The accused certainly faltered on the fact of not lending help to the people that he dashed into. Section 134 of the MVA, 1988 lays down “Duty of driver in case of accident and injury to a person”<sup>8</sup>. There is no legal obligation per se on bystanders, but there is a great responsibility on bystanders at the scene of the occurrence to arrange for any medical help at the earliest. Prosecution witness 1 Hari Shankar noticed that Prosecution witness 2 Manoj Malik, was the only one who could be saved considering his body was not mangled and conducted his duties of calling for help.
- **Hostile witnesses:** One of the strongest arguments of the prosecution rested on the fact that they had two key witnesses. However, it weakened their stance when these witnesses turned hostile. Reasons for such occurrences are mainly due to monetary consideration especially when there are high-profile cases involved, this being one of them. Such things can sadly not be proved and make the public lose faith in the justice system in the country. What is still so alarming and shocking is about Prosecution Witness 1- Hari Shankar who witnessed the entire occurrence but choose to be hostile. If it were for his statement, there would have been much more clarity on what exactly happened on that night.

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<sup>7</sup> Motor Vehicles Act 1988

<sup>8</sup> *Id*, s 134

## CONCLUSION

### **The decision of the Court:**

The Supreme Court held the case in favor of the appellant i.e. the State. The decision of the Trial court was upheld and acknowledged the fact that the High court erred in its decision.

The accused was ordered by the court to do the following:

- Pay Union of India a total amount of Rs. 50 lakhs within a duration of six months. This amount would be utilised to compensate the victims who lost their lives or were seriously hurt during motor accidents and will be used to compensate victims of hit and run cases in particular situations where the driver cannot be traced. If the accused defaults in the payment of money, then he shall be subject to simple imprisonment for one year.
- The accused is mandated to take up community service for a period of two years, which will be organized for a period of two months. If the accused defaults in conducting his duties, then he shall be subject to simple imprisonment for two years.

### **Reason for decision:**

The reason for the above decision was given in the following light. The first solution to the commission of such a crime would be imprisonment. However, it is essential to note that the accused has already served imprisonment time of two years which was dictated by the High Court. This criminal application is being heard 13 years after the commission of the crime and thus, owing to the period of limitation it is not justified that another sentence needs to be undergone by him. Moreover, there are various contentions that we have seen in the analysis such that: the prosecution failed on its duty in conducting a breath analyzer test, thereby making it a little hard to depict his instantaneous alcoholic state during the commission of the crime. Thus, the prosecution does not have a clean state in its conduct of duties, making it difficult to put the complete blame on the accused. There remains to be a hint of ambiguity lingering over what happened that fateful day. Another suspicious and unjustified event of the

witnesses turning hostile proves to weaken the case of the prosecution. However, it is undoubtedly true that the accused- Sanjeev Nanda was responsible for the commission of the crime, but the sequence of events that specifically took place remains to be a mystery.

**Linking the judgment to the principles of interpretation:**

While interpreting the judgment and tying it to the principles of interpretation, what comes to the evident forefront is the “Literal rule of interpretation”. Here, the High court has interpreted the case literally- where there was an existence of a rash and negligent act under Section 304 A of the IPC, and therefore instituted an imprisonment term of two years.

This however was declared as an error by the Supreme court. The facts and circumstances of each case differ, and considering the elements of rash driving, driving with the knowledge that there are individuals below the car, fleeing away from the crime scene, participating, or observing passively the destroying of material evidence- all point fingers to the possibility of mens rea. Thus, this was not just a rash and negligent act, there was an interplay of intention too- making Section 304 B of the IPC a more apt section to charge the accused.

The High court by erring in its decision has conveniently let the accused serve only a term of two years in prison. If the High court had upheld the decision of the Trial court of five years, he would have been sentenced to a longer term. Because the case was tried after a period of 13 years in the Supreme Court, their hands were tied owing to the period of limitation and thus could not play around with the sentencing period as the High Court erred on its decision and the accused had already served the sentence period dictated by the High Court itself.

Thus, the application of the literal rule of interpretation has resulted in a blunder, thereby making the life of the accused a little simpler, with respect to the “sentencing duration”.