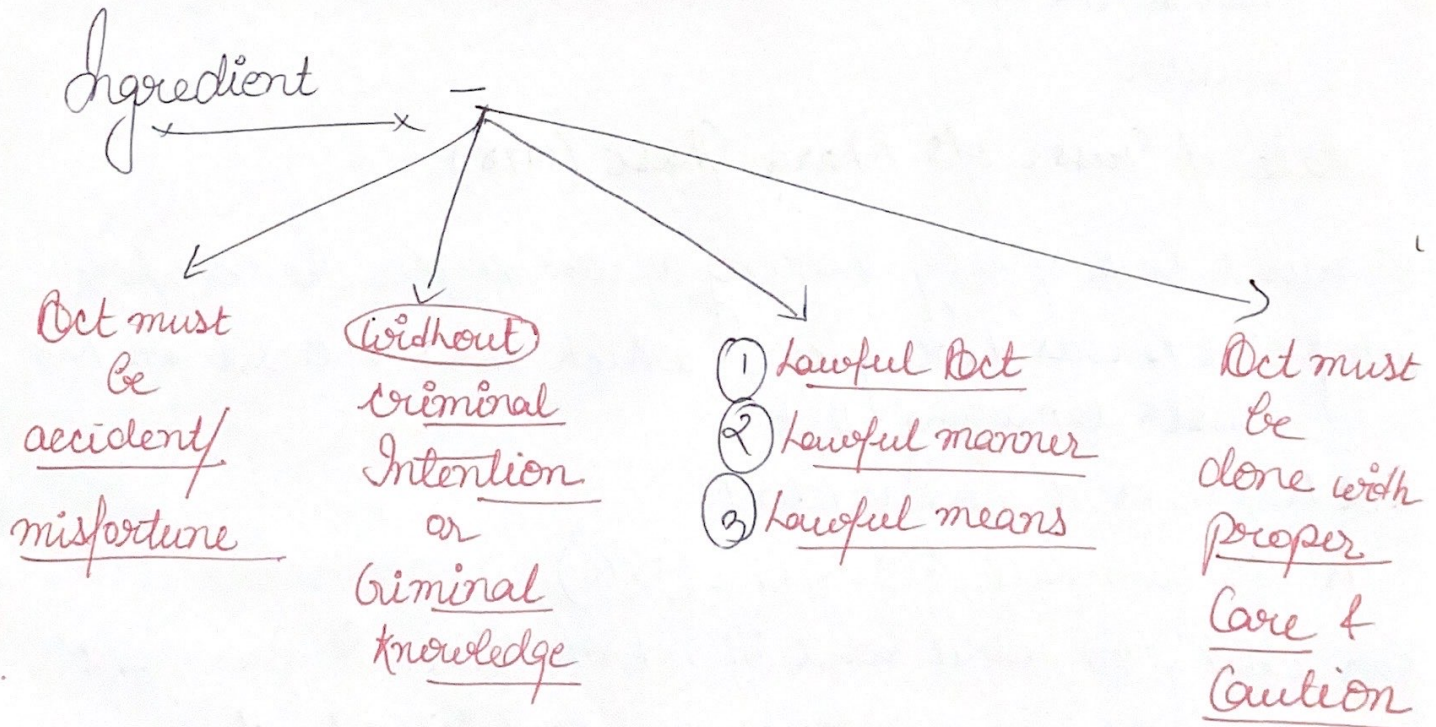


Accident Sec 80

A man is not criminally responsible for unintended and unknown consequences of his lawful acts performed in a lawful manner, by lawful means with proper care and caution.

Accident means an unintentional act or an unexpected act. It is something that happens out of the ordinary course of things.

Accident = Unintentional + unexpected act.



Jageshwar vs Emperor (1924)

The accused was beating a person with his fists, when the latter's wife with a two months child on her shoulder interfered.

The accused hit the woman but the blow struck the child on his head.

The baby died from the effects of the blow.

Not the accident as not in lawful act or lawful means.

Bhupendra Singh Chaudasama vs State of Gujarat (1948)

SC refused to allow the appellant benefit of S-80,

because the act has not been done with care &

caution.

State of Orissa vs Khara Ghosi (1978)

Caused death of D by shooting arrow under the bonafide belief that he was shooting bear which was entered in his field & damaging that.

Not liable as it was accident.

R vs Swindell & Osborne (1846)

Car racing on public road in intoxication. It was night and an old man was run over and killed. Both of them were tried for manslaughter.

Provision in IPC for accident

There are certain sections in IPC which gave provisions for penalizing the acts done by negligence and rash driving.

1. Sec- 279
2. Sec- 337
3. Sec 338
4. Sec. 304A Death by negligence

Causing Death by Rash or Negligent Act (Sec 304 A)

Sec 304 A was added in 1870 by Indian Penal Code (Amendment) Act, 1870.

"Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with Imp of two years or fine or both."

Causing death of any person by doing any rash or negligent act, not amounting to culpable homicide.

The provisions of this Sec apply only to cases where there is no intention to cause death and no knowledge that the act done, in all probability would cause death.

It applies to such acts as are rash or negligent as read w/ 336, 337 & 338 of IPC.

Ingredients

- 1- Death of the person in question
- 2- The accused must have caused such death
- 3- The such act of the accused was rash or negligent and didn't amount to culpable Homicide.

Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstance which show that the actor has not exercised the caution.

eg- where chemist gives expired date medicine to a patient and patient dies, the chemist would be liable for causing death by Negligence

Cherubin Gregory (1964) ^{Diff b/w rash & negligent.}

A man sets a naked live electric wire in the passage to a lavatory (bathroom) so that no trespasser can use the same, the trespasser manages to enter in lavatory receives the shock and dies. there was no indication of live wire so liable s/s - 304A. Rash but not Neglig.

It was held in Jacob Mathew v. State of Punjab,¹ that the word gross has not been used in Section 304-A of I.P.C., yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A of the I.P.C. has to be read as qualified by the word "grossly".

In Rathnashalvan v. State of Karnataka,² the accused, a driver of a lorry while driving at a very high speed in a rash and negligent manner dashed against a tree which was by the side of the road and caused death of Shivanna, Bililyamma and Basheer. Bleeding injuries were caused to CWs 3 to 5 who were travelling in the cabin of the said lorry. Two of them died at the spot and the third person died on the way to the hospital. Since CWs 3 to 5 sustained grievous injuries the accused was Charge-sheeted under Section 279, 337 and 304-A of I.P. Code. The prosecution examined 10 witnesses as PWs 1 to PW 10 to prove the guilt. The accused denied but he did choose to examine any witness on his behalf. The evidence of R.T.O. clearly stated that the accident did not occur on account of any mechanical defects in vehicle. The Supreme Court in view of the evidence of eye-witnesses some of whom were travelling by the same lorry showing that vehicle was being driven at a very high speed and that road was quite wide and there was no traffic at the time of accident, held that the accused was rightly found guilty under Section 304-A Indian Penal Code.

Negligent act not amounting to culpable homicide.—It was observed by Allahabad High Court in Ida Beg,³ that "section 304-A is directed at offences outside the range of sections 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge enters. For the rash or negligent act which is declared to be a crime is one not amounting to culpable homicide, and it must, therefore, be taken that intentionally or knowingly inflicted violence, directly and wilfully caused, is excluded. Section 304-A does not say that every unjustifiable or inexcusable act of killing not hereinbefore mentioned shall be punishable under the provisions of this section, but it specifically and in terms limits itself to those rash or negligent acts which cause death but fall short of culpable homicide of either description." Where A takes up a gun not knowing it is loaded, points in sport at B and pulls the trigger, 'B' is shot dead, A would be liable for causing the death negligently under this section.

Contributory negligence.—Contributive negligence is no defence to a criminal charge. A criminal charge shall be maintained if the accused is found guilty of contributory negligence.

was ...
It may be noted that rashness and negligence are not the same thing. Mere negligence cannot be construed to mean rashness. There are degrees of negligence and rashness, and in order to amount to criminal rashness or criminal negligence, one must be able to come to a conclusion that rashness has been of such a degree as to amount to taking hazard, knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences. Culpable rashness is acting with consciousness that mischievous consequences are likely to follow, although the individual may hope that such consequences may not follow. The criminality lies in not taking the precautions to prevent the happening of the consequence in the hope that they may not happen. (*Chamman Lal v. State*, AIR 1954 All. 186)

In *Smith v. Emperor*, AIR 1926, Cal., 300, M was driving a motor-car at night entered a road which being under repairs was closed to the traffic. The motor-car ran over and killed two coolies who were sleeping on the road with their bodies completely covered up except for their faces. It was held that M was not guilty under S. 304A.

The Supreme Court has held, in *Suleman Rahiman v. State of Maharashtra*, A.I.R. 1968 (S.C.) 829, that a direct nexus between the death of a person and the rash and negligent act of the accused must be established to convict a person under this section. When it is proved that the accused has been driving under a learner's licence or possesses no licence at all, there can be no presumption in law that such a person did not know driving and his rash and negligent act caused death. A direct nexus may be established.

In *S. N. Hussain v. State of Andhra Pradesh*, (1972) I.S.C.W.R. 306 it was held that "Rashness consists in hazarding a dangerous or wanton act." Where a railway level crossing protected and manned by a gateman was left open by him, as a result of which a passenger bus collided with a goods train, the bus-driver was acquitted on the ground that he was not rash or criminally negligent.

Emp. v. Supadi, (1925) 27 Bom. L. R. 604 — The accused, a girl of seventeen, who appeared to be carrying her infant daughter tied on her back, having been exasperated at an altercation which she had with her husband, attempted to commit suicide by jumping into a well. She was found alive in the well the next day, but her child was drowned. The trial Judge convicted the accused of an attempt to commit suicide and also of the murder of her infant child under Ss. 309 & 302. It was held, in appeal, that the offence which the accused had committed was not murder, but causing death by negligent omission, i.e., omission to put the child down before jumping into the well.